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Conference on Privacy Initiatives for 1984



Provincial
Secretariat
for Resources
Development
Ontario

The Honourable
Norman W. Sterling, Q.C.
Provincial Secretary
Don Stevenson
Deputy Provincial
Secretary



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CONFERENCE ON PRIVACY:

INITIATIVES FOR 1984

TORONTO, ONTARIO, CANADA
MAY 22 - 25, 1984

Provincial Secretariat For Resources
Development, Ontario
1984

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TABLE OF CONTENTS

	<u>PAGE</u>
MESSAGE FROM THE MINISTER:	v
The Honourable Norman W. Sterling, Q.C. Provincial Secretary for Resources Development	
EDITOR'S NOTE	vi
<u>PART A: ONTARIO GREEN PAPER</u>	
DISCUSSION PAPER ON PRIVACY: INITIATIVES FOR 1984	2
Rudy Wall, Policy Adviser Secretariat for Resources Development, Ontario	
Martha Fletcher, Policy Advisor Ministry of Transportation and Communications, Ontario	
<u>PART B: MAJOR CONFERENCE ADDRESSES</u>	
KEYNOTE SPEECH ON PRIVACY: INITIATIVES FOR 1984	20
The Honourable Norman W. Sterling, Q.C. Provincial Secretary for Resources Development, Ontario	
PROTECTION OF PERSONAL INFORMATION IN THE U.K.: THE DATA PROTECTION BILL	24
The Honourable David Waddington, Q.C. Minister of State for the Home Office, United Kingdom	
THE PRIVACY ACT: HOW IS IT WORKING TO DATE?	30
Dr. John W. Grace, Privacy Commissioner of Canada	

PART C: CONFERENCE PANELS

<u>PANEL 1: PRIVATE SECTOR PANEL: "PRIVACY: THE PROBLEMS DEFINED"</u>	36
PANELISTS:	
James L. Kirschbaum, Chairman and C.E.O., Fireman's Fund Insurance Company of Canada Ltd., Toronto (representing the Insurance Bureau of Canada)	37
Dr. William R. Ghent, Chairman, Council on Health Care The Canadian Medical Association Ottawa	41
Ross McFarlane, Q.C., General Counsel, General Motors of Canada, Toronto (representing the Canadian Manufacturer's Association)	44
<u>PANEL 2: PUBLIC SECTOR PANEL: "ACCESS TO INFORMATION: HOW DOES THIS RELATE TO PRIVACY?"</u>	50
PANELISTS:	
John D. McCamus, Dean, Osgoode Hall Law School, York University, Toronto	51
Professor T. Murray Rankin, Faculty of Law, University of Victoria, Victoria	62
Professor David Flaherty, Privacy Project, University of Western Ontario, London, Ontario	67
<u>PANEL 3: PRIVATE SECTOR PANEL: "PRIVACY: WHAT THE PRIVATE SECTOR HAS DONE"</u>	73
PANELISTS:	
Ralph Hancox, President Readers Digest Association of Canada, Montreal	74
Robert G. Logan, Director External Programs, IBM Canada Limited, Toronto	80
Eric Wimberley, Canadian Cable TV Association, Ottawa	84

	<u>PAGE</u>
<u>PANEL 4: PUBLIC SECTOR PANEL: "PRIVACY: SOME PRACTICAL SOLUTIONS"</u>	87
PANELISTS: Hugh V. O'Neill, President, American Society of Access Professionals, Washington, D.C.	88
Caroline Pesticau, Commission d'access a l'information du Quebec, Montreal	91
Douglas D. Smith, Assistant Deputy Minister Communications Policy Branch, Department of Justice, Saskatchewan	96
<u>PANEL 5: "PRIVACY: INITIATIVES FOR THE PRIVATE SECTOR"</u>	100
PANELISTS: W.H. Loewen, President, Canadian Independent Computer Services Association, Winnipeg	101
Boris Mather, Canadian Federation of Communications Workers, Ottawa	104
Maryon Brechin, Consumers' Association of Canada, Ottawa	105
<u>PANEL 6: "TRANSBORDER DATA FLOW: TOWARD A RESOLUTION FOR THE FUTURE: THE TRENDS, THE ISSUE"</u>	109
PANELISTS: Professor Thomas L. McPhail, Ph.D. Director and Professor, Graduate Program in Communications Studies, The University of Calgary	110
Jan K. Fedorowicz, Canadian Representative, International Chamber of Commerce, Ottawa	124
James C. Grant, Vice-President, Strategic Planning, Retail Banking, The Royal Bank of Canada, Ottawa	130

SUMMATION BY CONFERENCE RAPPORTEUR

135

Carl F. Dombek
Director, Legal Services
Ontario Ministry of Labour

MESSAGE FROM THE MINISTER

I am happy to introduce to you the Proceedings from the "Conference on Privacy: Initiatives for 1984", which was held in Toronto during May of 1984.

I would like to express my thanks to all the Conference Speakers and Panelists for their contributions at this Conference. I would also like to thank all those who assisted in the organizational tasks and who helped make the event a success.

In reading the papers presented in this volume, one is impressed by the complexity of the Privacy issue. It is apparent that one set of rules developed for one industry or company to protect personal information files may not be appropriate for another.

I was encouraged to hear from many private sector delegates at the conference that they favour a self-regulatory solution to privacy concerns. It is apparent that companies and industry associations want the opportunity of developing voluntary privacy codes and fair information practices.

I hope that this Conference Proceedings book will give some "food for thought " for this task and am convinced that the development of voluntary codes would greatly increase public confidence in information handling practices.

Yours sincerely,



Norman W. Sterling, Q.C.
Provincial Secretary
for Resources Development



EDITOR'S NOTE

The organization of this document reflects the desire to reproduce the proceedings of the Conference in as direct and true a form as possible.

The document begins with Ontario's Green Paper on the subject of informational privacy in the computer age. This is followed by a section containing the three major speeches, which set the tone for each part of the Conference.

The six panels are then presented in chronological order. The panels consisted of introductory remarks by the Chairman, presentations from three panelists and a wrap-up by a panel commentator. You will note that panels were also divided into two major streams: those dealing with public sector legislation and those dealing with the issue of personal data protection in the private sector.

The summary section contains the remarks of the Conference Rapporteur at the close of the Conference. This chapter can serve as a useful synopsis for the reader who does not have time to go through the entire document.

I would like to thank the conference speakers and Panelists for submitting their presentations in written form, making possible the publication of this book. I hope it will be of assistance in bringing together the many diverse views on this important subject.

Rudy Wall
Policy Advisor
Provincial Secretariat
for Resource Development

PART A

ONTARIO GREEN PAPER

DISCUSSION PAPER ON PRIVACY: INITIATIVES FOR 1984

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SYNOPSIS

Developments in computer and telecommunications technology have raised new questions about informational privacy - the capacity for individuals to determine what information is collected about them and the manner in which it is made available to others. This Discussion Paper introduces the reader to some of the major issues raised by the potential impact of technological developments on privacy and discusses some alternative approaches to their resolution.

These issues centre on data collection, data quality, disclosure limitations, security safeguards, costs and individual access to personal records in computerized data banks. Recent surveys of public attitudes suggest that individuals are very concerned about computers affecting personal privacy and about institutions collecting too much personal information.

The public sector has begun to address these problems with various statutes which establish and enforce fair information practices for data banks held by government departments and agencies. Examples include Canada's Federal Privacy Act and Quebec's Bill 65, both of which also establish offices to ensure compliance with privacy standards and consider individual complaints regarding information practices.

Ontario has introduced for First Reading Bill 80, the Privacy and Access to Information Act, that would seek to establish fair information practices for provincial government data banks. It would set up a compliance office as well as an office to receive citizen's complaints regarding information practices.

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** Ms. Fletcher is in the Communication Division, Ontario Ministry of Transportation and Communications. Formerly in the Political Science Department, York University, she has written extensively on public law and public policy issues in the Canadian context, with emphasis on constitutional law, federalism and telecommunications policy.

Data protection has received much attention in Europe, where countries like the United Kingdom, West Germany and Sweden have legislative programs which register data banks and regulate information practices in both the public and private sectors.

The private sector has shown sensitivity to privacy concerns by developing internal practices and, in some cases, voluntary privacy codes which embrace some of the principles commonly found in data protection laws. In the United States, Warner-Amex Cable Communications Inc. has developed a code to protect the privacy of the personal information it gathers on its customers. The Canadian Cable Television Association is in the process of developing a privacy code with similar self-regulation objectives.

Traditionally, credit bureaus, which are regulated in most provinces by credit reporting Acts, have been the main handlers of personal information in the private sector. However, the growth of computerized personal information banks can be seen in a wide range of industries including financial institutions, cable TV services as well as a host of other business and non-business sectors. The individual has no concrete guarantees against infringements of informational privacy in these data banks.

In order to develop a uniform approach to the privacy problem, Canadian jurisdictions will have to grapple with a number of legal issues. These include questions such as: Who owns the information in personal data banks? How should that information be legally protected? Do existing privacy laws need to be amended in light of the expanding technology? Does liability ensue from an improper or unauthorized release of personal information? Then, of course, there is the everlasting problem of jurisdiction between the federal, provincial and territorial governments to harmonize rules as they are developed and to avoid any conflicts in the laws.

It is a generally held view that individual rights, including privacy rights, are not within the exclusive legislative competence of either the Federal or Provincial levels of government but rather are determined by the Canadian Constitution and more particularly S.91 and S.92 of the B.N.A. Act. Although a number of governments already have Privacy Statutes, it is important that these initiatives continue and perhaps expand.

This paper analyzes four approaches to resolving privacy concerns brought about by the growth in computerized handling of personal information in the private sector. Instead of reviewing the whole spectrum of possible approaches, it focuses on four that are thought to be suitable for the Canadian situation.

The Government has developed a strong role in promoting and adopting micro-electronic and communications technology. It therefore has a complementary responsibility to ensure that privacy standards are upheld as the technology is adopted in all sectors of the economy.

The first possible approach would be for government to encourage self-regulation in industries which are important data users. This could take the form of voluntary privacy codes modelled after those used by companies discussed later in this report. The most noteworthy attempts at self-regulation also include provisions regarding fair information practices in their customer agreements. Government could work with a representative association in each industry sector in developing a privacy code for that sector. This would produce a series of voluntary privacy codes tailored to fit the requirements of each sector.

A second possibility would be for government to develop legislation which sets out fair information practices and includes a penalty provision for the offense of violating these practices. This could be voluntary in form, covering only those firms which wish to comply, or it could be compulsory, including all important data users in the private sector.

A third possible alternative is to set up a registration and regulation system governing data users. Such a system could set out major principles regarding information handling; set up a Registrar or Commissioner's Office to administer the registration system and ensure compliance with principles; and establish individual rights to access, correction and non-disclosure of personal information. Models of registration systems include the United Kingdom Data Protection Bill as well as systems set up by Canadian provinces to regulate personal credit information.

Combinations of these three approaches would yield other possibilities. One such possibility which is worthy of analysis is a combination of the Self-regulation and Registration approaches described above. For the purposes of this paper, this has been called the "Voluntary Registration" approach. Industry associations could develop privacy codes tailored to their industry, monitor compliance among their members, and mediate complaints from individual citizens. This could be done in consultation with a public Privacy Office which could also keep a registry of all participating associations and companies.

PART I: UNDERSTANDING THE ISSUES

Introduction

The need for informational privacy - the capacity for individuals to determine, in significant measure, what information is collected about them and the manner in which it is made available to others - has long been recognized as a legitimate aspect of a free society. Yet, though the importance of privacy as a value has been widely accepted, its existence has depended in large part on the technological impossibility of detailed surveillance and record-keeping about large numbers of individuals. That technological barrier no longer exists. Therefore, standards will now have to be considered if informational privacy is to

be maintained in the face of technological advance.

Key to the creation of such safeguards is the development of a consensus regarding fair information practices. These practices would generally define limits on the way personal information is collected, stored and used. They would also attempt to balance the individual's privacy with competing social values of openness and economic values of efficiency. For the purposes of this paper, personal information may be defined as information in a record about an individual person where that person is identified by name or is readily identifiable by other means.

The purpose of this Discussion Paper is to introduce the reader to the major issues raised by the potential impact of technological developments on individual privacy and to discuss some of the alternative approaches to their resolution.

Recent developments in computer and telecommunications technology have made it possible to process and link information held in a variety of data banks with ease, low cost and speed. In the past quarter century record-keeping by both government and private entities has moved from the slow, clumsy era of paper files, where information is entered manually, to high speed, efficient, machine-readable files. This development has had a number of significant implications for privacy.

First, machine-readable files are more quickly retrieved and more readily and anonymously updated. What was once a collection of pieces of paper, with the age of each readily apparent, is now a computer readout. Moreover, computer files are easily accessible from many distant points in the organization. More important, however, is the fact that computerized files are readily merged, allowing a number of files dealing with the same subject or individual to be compiled into a single dossier. This can be done within the organization which collected the data. However, data can also be easily transferred to another information user and combined with other files from other sources for uses

not envisioned by any of those persons associated with the initial information-gathering process. This is made easier by the use of a single identifying number, but the absence of such a number is not a significant bar to such compilations. In addition, telecommunication links between the holders of files make it possible for the files collected by one institution for one purpose to be shared with other information users for quite different purposes. This process is called data linkage.

The potential impact of efficient retrieval, sharing and merging of files on informational privacy is magnified by the sheer number and variety of sources of computerized information about individuals. The physical size of computers has dropped in twenty years from room-sized machines to ones which fit easily on a desk top. Costs of machinery and processing have dropped at a comparable rate. The older generation of machinery required extensive training to use; present equipment, dubbed "user friendly", can be operated with little specialized training or knowledge.

Where once only the largest institutions, including government, had the resources to effectively use the computer, computerized record keeping is now the norm in virtually every area of human activity. Once the national census was the sole compilation of varied facts about individuals. Now it is possible to compile even more varied information about individuals by the sharing of information among file holders. In government, files held on individuals include information on vital statistics, tax, criminal and court proceedings, health, driving, military and school records, among others.

In the private sector, information held on individuals in computerized files is even more varied. Among the best-known is the credit-rating file. However, the public is becoming aware of other computerized files including those in the insurance, banking and telecommunication industries. In addition, there are many data users of

which the public is unaware: retail sellers who have credit card systems or teleshopping services; magazines which keep subscription lists; charitable, business, professional or community organizations; and many other service providers. As cable television companies enter into two-way operations which make it possible for the consumer to undertake telebanking, teleshopping, and instant polling, and order television programs on a "pay per view" basis, greater amounts of personal data will be stored by the private sector.

This all pervasive collection of personal information is a virtually unavoidable feature of life in the last quarter of the twentieth century. As the U.S. Privacy Protection Study Commission concluded in 1977:

It is now commonplace for an individual to be asked to divulge information about himself for use by unseen strangers who make decisions about him that directly affect his everyday life. Furthermore, because so many of the services offered by organizations are, or have come to be considered, necessities, an individual has little choice but to submit to whatever demands for information about him an organization may make.

Fair Information Practices

This threat to privacy has resulted in a number of attempts to define appropriate limits and to protect the privacy of personal information stored in computer systems. The general principles enunciated in the Council of Europe's "Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data" are typical of efforts in a number of jurisdictions to establish guidelines which recognize the benefits of computerized record keeping and the value which individuals place on personal privacy. These guidelines include the following concepts:

- i) Personal information should be obtained and processed fairly and lawfully;
- ii) Personal information should be held for a specified and legitimate purpose or purposes;

- iii) Personal information should not be used or disclosed in a way incompatible with those purposes;
- iv) Personal information should be adequate, relevant, and not excessive in relation to the specified purposes;
- v) Personal information should be accurate and, where necessary, kept up to date;
- vi) Personal information should be kept in name linked form for no longer than is necessary for the specified purposes;
- vii) The data subject should have access to information held about him or her and be entitled to its correction or erasure where the legal provisions safe-guarding personal data have not been complied with;
- viii) Appropriate security measures must be taken against unauthorized access, alteration or dissemination, accidental loss and accidental or unauthorized destruction of data.

These guidelines recognize the individual's need to ensure that information which is gathered about him is done so with his consent; that this consent is given with a full and accurate understanding of the purpose for which the information is gathered; that other uses will not be undertaken without prior consent; that the file will be made available so that the individual can ensure the information is correct; that, in the event there is disagreement about the accuracy of the information, the data subject's version will be noted; and that third parties will not be given access without the individual's knowledge or permission except where required by law.

Even where there is general agreement with these principles in both the public and private sectors, however, there are a number of impediments to their fulfillment. One of these is the companion principle of freedom of information. If an individual has full control over all his personal information, this right can present a major barrier to the rights of others to obtain information on government activities. Clearly a balance must be struck.

Another impediment is the problem of computer crime, where data is taken or released without the permission of the data bank owner. It has been suggested that criminal code amendments which would establish specific offences relating to computer crime would go part way to solving this problem. However, owners of data banks would still have to take reasonable precautions inside their organizations to ensure that personal information is kept confidential and that employees handling this information follow necessary safeguards.

A third potential impediment is the problem of transborder data flow, when information relating to individuals is removed to and processed in another jurisdiction where privacy is not adequately protected by business practices or by law. Here again efficiency and the value of the free flow of information may come into conflict with privacy norms. Certain of these issues are beyond the scope of this discussion since they fall within the realm of the Federal Government.

Public Perceptions

Recent surveys indicate that concerns about privacy brought on by growing computer use are not the sole preserve of academics, futurists, and policy makers. Surveys conducted for the Ontario Government in 1980 and 1983¹ show that a considerable majority of Ontario citizens are concerned about computers affecting personal privacy. In addition, in 1983, about half the population felt that government has the major responsibility for ensuring confidentiality of personal and financial information in our society. An additional 38 percent saw the private sector as having major responsibilities for privacy protection. The earlier 1980 survey further revealed that a sizeable minority believe that institutions such as government, credit-grantors, employers and insurance companies ask individuals for too much personal and financial information.

As well, a 1981 Gallup² survey on attitudes toward microelectronic technology

asked respondents to indicate the importance of thirteen issues associated with computers and information technology. Privacy and confidentiality of personal information was by far the most important of the issues and was mentioned by 63 percent of the respondents. The number of people controlling information, a closely related issue, was third in importance, mentioned by 45 percent of respondents. Concern for privacy was highest among those who reported that they had knowledge of microelectronics and among respondents who held executive, sales and clerical jobs. Individuals were also asked to look ahead for the next five years and predict whether or not their privacy would be "invaded or seriously disturbed" by any of seventeen organizations, entities, or persons. There was a high level of concern. Fifty percent or more of the respondents indicated that they believed that each of the following entities could be the source of an invasion of privacy: a credit rating agency, a computer or data bank, an insurance company, the provincial or federal government, a bank, someone who could interfere with their mail, and someone telephoning them. Again, people who reported knowledge of micro-electronic technology were those most likely to anticipate the likelihood of a privacy invasion.

A November 1982 survey conducted in London, Ontario by Professor Neil Vidmar³ of the University of Western Ontario for the Ontario Government indicated similarly high levels of concern for privacy in the development of interactive services on cable television. Over two-thirds of those surveyed believe that Canadians have less privacy now than ten years ago. The types of information identified as most sensitive and most in need of protection were bank balances, information on when a person enters or leaves his or her home (information collected by home security systems delivered by cable), credit records, personal earnings and medical records. The findings showed that nearly half of the survey respondents were worried about government use of information,

but an even greater proportion distrusted private business. Seventy-two percent of the sample favored regulatory intervention by government, with a majority of 52% seeing a regulatory role for both the federal and provincial governments. The study also indicated a widespread belief that many public and private organizations collect more personal information than is necessary.

Industry Response

As the OECD guidelines⁴ have noted, one major means to effective privacy protection is the development of self-regulation by industries and firms which make extensive use of personal information. Several firms in this category have responded to the challenge of self-regulation with well developed internal practices, corresponding to the common definition of fair information practices outlined by the OECD, among others.

Bell Canada, for example, is a major corporation which handles a substantial amount of personal information which is necessarily collected for billing purposes. Company policies consider all subscriber information except name, address and telephone number to be private information held on a need-to-know basis within the company. Personal data are not available for sale, and Bell employees are instructed that all information about customers, wherever collected, is strictly confidential. Indeed the existence, content or nature of any customer communications are not to be made known to third parties, except in compliance with a legal order. Should such an order be made, Bell will notify the customer of the order unless specifically prohibited from doing so.

The Bank of Montreal is another personal data user which has developed and published information on its specific privacy protection practices. Data collected and maintained on file is the minimum necessary for the service desired. Access to that information is strictly controlled within the company, and information is generally not conveyed to third parties without the customer's consent, except that required by

statute or court order. Customer applications for credit card services, personal loans and mortgage loans, however, include a general consent or waiver clause which authorizes the bank to disclose information about the customer to third parties under certain circumstances. The practice of requiring customers to sign waivers, common among financial institutions, has been criticized in the past as undermining the customer's privacy protection.

Industry-wide self-regulation through establishment of a privacy code is currently being developed by the cable industry in Canada through its association, the Canadian Cable Television Association. A CCTA subcommittee, using the highly regarded Warner-Amex cable privacy code in the United States as a starting point, is in the process of creating a code for the industry tailored to the Canadian situation. It is expected that this code will be accepted and implemented by CCTA member companies as they develop their interactive service offerings. A major advantage of code development prior to the development of services is that systems can be designed in advance to enhance computer security and data protection capabilities.

Companies with voluntary privacy codes are still the exception rather than the norm, however. It is clear, therefore, that the widespread computerized handling of personal information will require the setting of standards in some form to ensure that infringement of citizens' privacy rights do not occur.

PART II: LEGISLATION GOVERNING PUBLIC SECTOR DATA BANKS

There is a growing body of legislation, in Canada and abroad, which addresses itself to the issues surrounding information access and privacy. That most of it is of fairly recent origin reveals the extent to

which these issues are interconnected with developing information technologies and the speed with which privacy problems are expected to reach serious proportions. A variety of solutions are in evidence here, some dealing only with the question of privacy as affected by government data banks, others addressing the question of private sector data protection as well.

Canada

Privacy protection on the national level in Canada is focused on development of fair information practices in government data banks under federal jurisdiction. The Canadian Privacy Act, passed in 1982 and proclaimed in 1983, establishes the right of Canadian citizens and permanent residents to know, with certain exceptions, of the existence of information files on them; to examine, correct and challenge information in them; to know to what uses the file has been put; and to be consulted regarding certain future uses thereof. A companion statute, the Access to Information Act, was designed to maximize compatibility between information access and privacy. The Privacy Act requires publication of an annual index to federal information banks, and creates a Privacy Commissioner with the power to mediate disputes, investigate to ensure compliance by the data bank holder in question, and apply to the courts for review of government decisions to withhold information.

Provinces

Both Nova Scotia and New Brunswick have freedom of information legislation dating from the late 1970's. Nova Scotia's lists the types of documents that may be accessed, rather than establishing a general access principle, while the New Brunswick Act establishes general principles, with appeals to an ombudsman and in camera inspection by the courts of contested documents.

Newfoundland passed both Freedom of Information and Privacy Acts in 1981. The former lists the departments, boards, agencies and commissions affected, while the latter makes it "a tort, actionable

without proof of damage, for a person...to violate the privacy of an individual."

Quebec deals with freedom of information and privacy together in an Act passed in 1982 and designed, like the federal Act, to protect personal information in government files, while allowing access to documents of public bodies. These bodies include not only the provincial government and all its departments and agencies, but also municipalities (including county, regional and city governments and agencies), and educational, health and social service institutions. The Act requires that an index of files kept by public bodies be compiled for circulation by The Information Access Commission and that requests for information be processed free of charge and within twenty days of receipt. The Commission has a variety of supervisory, investigatory and decision-making powers.

Ontario has examined the questions of privacy and access to information extensively in the past. As a result it has been proposed, in Ontario's Privacy and Access to Information Bill, that fair information practices be defined and made obligatory for government data banks. The proposal would establish a Data Protection Office with authority to develop and apply standards for the management of personal data systems. These standards would include requirements to restrict information collection to the minimum essential for the operation of a program; provide that personal information normally be collected directly from its subject, and that the reason for its collection be disclosed; and generally require that information collected not be disclosed without the individual's consent. Exceptions to the rule of authorized disclosure include occasions where it would not represent an unwarranted invasion of personal privacy, where it is necessary for the administration of authorized government programs, or where it is in the best interests of the individual or society. Individuals would also have the right to access and correction of files, with the data holder obligated to notify

past users of the file of any correction. Individuals would also have the right to file complaints to a separate Commissioner's office.

In 1968 British Columbia passed the Privacy Act and became the first Commonwealth jurisdiction to establish an independent cause of action for the unreasonable and unwarranted invasion of an individual's privacy. This Act was followed by similar legislation in Manitoba and Saskatchewan. None of these privacy Acts, however, deal expressly with the inappropriate or unauthorized use of personal information which has been given voluntarily to another person or institution and integrated into an information bank. Moreover, there is a strong financial disincentive to the individual in enforcing his or her rights through the courts, since the costs of the action would often outweigh potential benefits.

United States

The United States' Privacy Act dates from 1974 and applies to personal information held in government records. It is essentially a "good housekeeping" statute which sets standards for administration of data files. As such, it requires government to report regarding the existence of information files, to ensure the quality of the information therein, to provide access to the subjects of such files, to use data only for the purposes for which it was collected, and to provide a record of disclosures of that information to the individual affected. There are no time limits for response, and the Act is self-enforcing in that the individual affected has recourse to the courts rather than a separate authority. The United States also has a Freedom of Information Act with rather wider rights of access than the Privacy Act.

United Kingdom

Parliament passed data protection legislation in 1984 which encompasses both private and public sector automated data banks. This legislation establishes a Data Protection Registrar

and Tribunal; requires that both private and public data banks be registered (with certain exceptions); prohibits unauthorized disclosure of information; provides access for individuals to data in registered data banks; and entitles them to amend files and to seek compensation in the courts for damages suffered. The Registrar is empowered to de-register data banks which contravene data protection principles and can prohibit the transfer of data outside the United Kingdom where the country of destination fails to meet minimum data protection standards. This legislation will enable the United Kingdom to adhere to the Council of Europe Convention on data protection.

Federal Republic of Germany

While there is no general access to information law, the Federal Republic of Germany has a highly developed network of data protection arrangements aimed at safeguarding personal privacy. These include both the Federal Data Protection Act and state data protection legislation, which enshrine in law the data protection principles of the Council of Europe. The Federal Act covers both federal public sector data banks and the private sector on a nationwide basis, while state Acts each govern their respective government's data practices. Primary responsibility for ensuring that the laws are followed falls on the heads of government agencies which create and use personal information files. As well, both federal and state legislation provide for the establishment of the office of Data Protection Commissioner, with responsibility to supervise and advise agencies which handle personal data and to report to the legislature annually. The success of this system of data protection lies not in the coercive powers available to the Data Commission, but on the high degree of consciousness of appropriate data handling procedures which has been achieved both in the public and in government.

Sweden

Sweden has been the world leader in both access to information and data protection legislation. Access to government information is regulated by the Freedom of the Press Act and the Secrecy Act, which taken together, provide access within a set of specific and limited exceptions. Information privacy is provided through several legislative Acts, the most important of which is the Data Act of 1973. This Act created a Data Inspection Board to regulate the collection and use of personal data in computerized form in both the public and private sectors. Thus the major function of the Board is the licensing of all data registers held by government or private sector data users, and the setting of the rules which govern their use. Decisions of the Board can be appealed to the Minister of Justice and to Cabinet, though the number of such appeals has consistently been small. In general, the first priority of the system is the protection of personal privacy, with less weight given to economy and efficiency in data use.

Council of Europe

The Council of Europe has prepared a "Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data" which has as its purpose the securing of respect for the individual's right to informational privacy. It requires signatory states to give effect in domestic law to the basic principles for data protection embodied in the Convention. These include: fair information gathering practices; limitations on use and contents of files in light of the purposes for which they were gathered; accuracy; minimal identification of individuals; limitations on the kinds of data to be processed; appropriate security measures; and procedures for identification, examination and correction of files by the individual to whom they pertain. It also confirms the right of signatory states to refuse to allow personal information to be sent to countries without comparable data protection provisions.

Organization for Economic Cooperation and Development (OECD)

The Council of the OECD has developed guidelines governing the protection of privacy, which it regards as minimum standards for its members. In a manner similar to the Convention of the Council of Europe, the OECD subscribes to the following principles: collection limitation, data quality, purpose specification, use limitation, security safeguards, openness, individual participation and accountability. While specifically noting that data protection should not provide an excuse for restriction of transborder data flow, the OECD agrees that member countries should prevent the export of data which circumvents domestic privacy legislation, or involves export of data to countries not substantially observing the OECD principles. In particular, member countries are urged to: adopt appropriate domestic legislation; encourage and support self-regulation; provide reasonable means for individuals to exercise their rights; provide adequate sanctions; and ensure that there is no unfair discrimination against data subjects.

Summary

The preceding discussion suggests that the privacy legislation in these various jurisdictions covers a wide spectrum. Most laws ascribe to a similar set of fair information practices or principles. Although there is some variation on finer points, such as whether or not information collected must be "relevant" and collected "directly", most laws establish individual rights to access and correction, and build in some controls over the transfer of personal information to third parties. However, beyond this basic similarity, these laws vary greatly in their strength and application.

For the purposes of this paper, it is worth noting three of the models discussed above. The United States Privacy Act, at one end of the spectrum, provides an example of a self-enforcing law which sets out certain

individual rights but does not establish a separate enforcement agency. The Act leaves it up to the individual to seek recourse through the courts.

A second model, illustrated by the Canadian Privacy Act, establishes an enforcement agency with investigation and monitoring responsibilities. Aggrieved individuals can complain to the Privacy Commissioner who can also apply to the courts for review of government decisions to withhold information. The new Quebec law has some similarities, although it has wider application, covering municipalities, school boards, universities and health and social service agencies as well as government departments. The Quebec law gives its Commission significant powers to supervise information practices, respond to complaints, conduct investigations, and issue binding orders to a public body.

A third model that could be identified on this spectrum is illustrated by the United Kingdom registration system described above. In some ways this system of regulation is stronger than the two models summarized above because it requires the formal registration of data banks and gives the Registrar substantial powers of investigation and enforcement, including the power to refuse registration of data banks if the user does not comply with the principles of the Act. The Swedish and German registration systems go further and could be regarded as two additional models on this spectrum.

PART III: ALTERNATIVES FOR THE PRIVATE SECTOR

Summary of Issues

The first part of this paper has discussed the challenge which computerized handling of personal information poses for the protection of privacy. From this discussion emerge a number of competing notions. Most would agree that there is a need to weigh the gains in computer efficiency and speed against the costs to individual privacy which have arisen. In economic terms, therefore, there are conflicting pressures

for business establishments to achieve all the cost savings new technology has to offer on the one hand, and to provide the individual with reasonable privacy protection, on the other.

Although it is difficult to generalize, the cost of providing minimum privacy protection is thought not to be great in relation to the efficiency savings usually afforded by new technology. Moreover, these "protection" costs are often minimized if standards or procedures are established prior to the introduction of new systems.

The privacy issues outlined in Part I could be summarized as follows:

1) Data Collection: Should personal information collected by data users⁵ be limited to that which is relevant to the user's specified purpose and to that which has received the data subject's informed consent? Should there be a further requirement that personal information be collected directly from the data subject? The major statements of principle on the data collection issue usually also include a reference to data being obtained fairly and lawfully for a legitimate purpose. This paper assumes that legitimacy is not at issue and will focus on relevance and informed consent with regard to data collection.

2) Data Quality: Should personal information collected by data users be subject to a requirement to be accurate, complete and up-to-date?

3) Disclosure Limitations: Should disclosure of personal information by data users to third parties be limited to only that information required to fulfill the user's specified purpose? Exceptions would include cases where the subject consents or where disclosure is compelled by law.

4) Security Safeguards: Should data users be subject to a requirement to ensure the physical security of personal records?

5) Individual Access: Should data subjects have the right to confirm the existence of their personal data in records, inspect and receive copies of the data, and request changes to erroneous or incomplete data?

6) Costs: If citizens are given rights of access, correction and non-disclosure, the cost of enforcing these rights must not be prohibitive. Regulatory options which give enforcement agencies quasi-judicial powers to settle grievances may present one option for providing enforceable rights for individuals.

This section will analyze a number of alternative solutions to these issues as they apply to the private sector and then review the strengths and weaknesses of each alternative. The analysis begins with the assumption that the need for informational privacy is a legitimate claim and that the principles enunciated by the Council of Europe's Convention on Data Protection (summarized on page 4) represent a reasonable list with which to evaluate policy alternatives in this area.

Scope

This paper attempts to deal with both the public and private sectors. From the individual citizen's point of view, the threat to privacy of personal information exists in both sectors. Although North American privacy laws have thus far only addressed the problem in the public sector, countries like the United Kingdom⁶, West Germany and Sweden have legislative programs in place which cover both sectors.

This leads to the question of self-regulation or government regulation. Some of the competing arguments concerning the effectiveness and desirability of self-regulation as a means of ensuring fair information practices will be examined below in the context of the private sector.

Another general question which all jurisdictions have to decide is whether regulatory programs should cover only computerized personal records or whether they should apply to all personal records, manual and computerized. The major premise in the United Kingdom's White Paper on data protection is that computerization presents new threats to privacy because of the speed, low cost and ease with which personal information can now be distributed. The implication here is that the costs and effort involved in the transferring of information in manual files act as a disincentive to unauthorized disclosure.

On the other hand, the data protection laws covering public sector records in North American jurisdictions do not distinguish between computerized and manual records. These laws provide the individual with certain rights regarding personal information in both computerized and manual records. The importance of manual records is seen when categories such as health information are considered.

Another important question is whether all data banks, or only those above a threshold size, should be covered by whatever regulatory or self-regulatory approach is undertaken. It is argued by some that only those data users above a threshold size should be candidates for regulation, since the cost of compliance is a greater burden for smaller institutions. However, exemption of smaller data banks would leave information in those banks unprotected, thereby weakening individual rights.

Policy Options

This section looks at four possible options: a voluntary privacy code, a legislated code, a registration and regulation system, as well as an approach which combines elements of the first three. This list is not intended to be exhaustive, but to offer for discussion some reasonable alternatives which could fit the Canadian situation.

1) Voluntary Privacy Code: If the need for privacy protection is accepted as a legitimate claim, governments could encourage specific industries (through their associations) and corporations which are important data users to develop voluntary codes, incorporating the important principles normally embodied in data protection laws. Companies such as Warner-Amex in the U.S. and IBM in Europe have already developed guidelines for the protection of personal information in their files. In Canada, the Canadian Cable Television Association is in the process of developing a privacy code.

In 1981, Warner-Amex Cable Communications Inc. developed a code designed to protect the privacy of personal information which the company compiles on individual subscribers of cable TV services. In the code, the Company agrees to keep subscriber information physically secure and confidential and agrees to keep subscribers informed of all information gathering functions of the cable TV services being provided. Agreements with individual subscribers set out the terms under which information will be used and provide that no other individual data will be collected without the individual's consent. The code also gives the subscriber the right to examine his or her file and request corrections of erroneous data.

The code is being made a part of subscriber contracts and franchise agreements, making it self-enforcing and giving the subscriber certain rights by agreement. In theory, an individual who felt that his privacy rights had been infringed could commence a civil legal action for breach of contract.

Comments: The advantages and disadvantages of the voluntary code approach as a resolution to privacy issues could be summarized as follows:

- It provides no assurance that the majority of important data users will voluntarily adopt codes.
- No formal enforcement or compliance methods are established (except the limited power of the individual to seek recourse for breach of contract, in cases where the code is

supplemented by a written agreement between data user and subject).

- . It imposes the least cost and interference on data users.
- . It features maximum flexibility, since codes could adapt to changing technology and public requirements.
- . It does not guarantee substantial rights for individuals in the case of a dispute over access, correction or disclosure.
- . The adoption of various voluntary codes by different industry sectors and companies would result in a lack of uniformity of privacy protection for individuals.

2) Legislated Privacy Code: One approach which falls in between voluntary codes and more traditional government regulatory solutions, consists of developing legislation which would set out fair information practices and would include a penalty provision for the offense of violating these practices. Fair information practices could cover the issues of data collection and quality, disclosure limitations, security safeguards and individual access as set out above. This law would permit a civil lawsuit in tort and would essentially constitute a self-regulatory approach to the problem since it would not require the establishment of an enforcement agency.

Some authors have suggested that public demands for privacy rights have arisen from the failure of legislatures and courts to develop such a body of law. It is generally agreed that the common law in Commonwealth countries offers no protection for personal privacy per se.

The Privacy Acts enacted by British Columbia, Saskatchewan and Manitoba have been used infrequently and are also thought not to provide the individual with substantial remedies for the types of privacy problems brought on by the computerized handling of personal information.

Legislation establishing a privacy code could take one of two forms:

- (a) An Act could permit voluntary compliance. Regulations to the Act could register those industries or companies which wish to comply. Voluntary participants would thus be identified as privacy-conscious companies in their field.
- (b) Alternatively, an Act could require compliance. It could apply to all data users, or only to those institutions with data banks above a threshold size.

Comments: Following is a summary of the strengths and weaknesses of this approach:

- . It provides no assurance that a majority of data users would voluntarily comply. Only the compulsory version of such a statute would guarantee participation by a majority of data users.
- . The remedy available to the individual is costly and impractical. It would likely not be used often since the cost to the individual would almost always exceed possible benefits from using this remedy. Therefore, this approach also does not provide substantial rights to individuals regarding access, correction, disclosure and resolution of disputes.
- . It imposes little cost and interference on data users.
- . It allows a high degree of flexibility, since the legislation would phrase fair information practices in general terms, thereby not hampering the application of new technology.
- . If remedies were not used widely by individuals, such an Act would not have a major effect on information practices. The compulsory version of such an Act, however, might encourage some uniformity in general data collection and disclosure practices.

3. Registration and Regulation: Another possible solution to these issues is for government to legislate to require registration of data banks; give individuals defined rights of access and correction; regulate the collection and third-party

disclosure of personal information; guarantee the security of data and establish a Registrar with investigation and enforcement responsibilities. The registration requirement could apply to those institutions which automatically process personal information in data banks.

This is basically the approach taken by the United Kingdom in their Data Protection Bill, referred to in Part II of this paper. This Bill sets out a registration and enforcement system covering data users which process personal information automatically. Although it applies to both the public and private sectors, the basic structure of this registration system can serve as a useful model for our discussion purposes here.

In this model, the public registry of data users helps individuals become aware of the existence and purpose of computerized personal information banks. The data user is required to identify himself, the information he uses, where it has come from and to whom it is disclosed, as well as the purposes for which it is used. The Registrar has the power to make inquiries, to inspect data files and to require modifications to a system. In extreme cases, he may refuse registration for non-compliance with the major data protection principles embodied in the Act. Since the Registrar is given such wide powers, the Bill sets up an appeal process to an independent tribunal, composed of judicial and computer experts.

The United Kingdom Bill also gives the individual rights of access to personal data; the right to compensation for damages from use of inaccurate data, loss of data and unauthorized disclosure; as well as the right to apply to the courts for rectification or erasure of incorrect data. The individual would have to apply to the court if a data user contravenes any of these individual rights, in order to secure compliance or seek damages in civil proceedings.

Other features of the Bill enable the Government to restrict the transfer of categories of information to specified countries which do not have data protection legislation of comparable strength; give the power to make regulations governing particular categories of personal data such as racial origin, political and religious beliefs; and exempt the collection of data for research purposes where individuals are not identifiable.

The following comments focus only on the general characteristics of a registration system such as the one modeled in the United Kingdom Bill as they could apply to the private sector. They are not meant as an evaluation of the Bill overall.

Comments: The advantages and disadvantages of this approach could be summarized as follows:

- . It provides legislated privacy protection covering all important data users and includes an enforcement mechanism to ensure compliance.
- . It provides the individual with legal rights of access and correction as well as protection against disclosure to third parties. However, the enforcement of these rights in the case of a dispute may be costly to the individual if the remedy involves application to the courts.
- . This approach imposes new regulation on the private sector, resulting in additional costs for data users.
- . It allows some flexibility, since the data protection principles are general and the Registrar's powers are defined broadly, allowing him to handle demands of changing technology and information practices.
- . It would have a major impact on information practices because of the registration and enforcement powers.

Registration schemes are a common feature of data protection legislation in other European countries. Brief descriptions of the legislation in West Germany and Sweden, probably the other two most noteworthy examples, are given in Part II.

Many Canadian provinces regulate the collection and disclosure of personal credit information through credit reporting Acts. In Ontario, for example, the Consumer Reporting Act registers Consumer reporting agencies, regulates the gathering, storage and disclosure of credit information, and gives the individual access to his or her personal credit file. The Registrar has the power to revoke or refuse registration under certain circumstances, in which case the applicant is entitled to an appeal to a tribunal. The models used by provinces to regulate credit information might also provide some guidance to registration systems contemplated for personal data users.

4. Voluntary Registration: Combinations of the above three approaches could produce other possibilities. One such possibility which is worthy of analysis is a combination of the Self-Regulation and Registration approaches described above. Industry associations could develop privacy codes tailored to their industry, monitor compliance among their members, and mediate complaints from individual citizens. This could be done in consultation with a public Privacy Office which could also keep a registry of all participating associations and companies.

Comments: Following is a summary of the strengths and weaknesses of this approach:

- . As in the self-regulation model, this solution offers no assurance that the majority of data users will voluntarily join a registration system.

- . It would establish a monitoring system to encourage compliance by participating companies and agencies. Although this could be a very positive force, no formal compliance or enforcement powers would be available.
- . It would result in some extra costs to data users.
- . It features a great degree of flexibility allowing industry and the coordinating agency to respond to changing technology and information practices.
- . It does not guarantee concrete rights for individuals in the case of a dispute over access, correction or disclosure. The complaint handling activities of industry associations, however, could fulfill a mediation role.
- . Although the adoption of different privacy codes by different industry sectors would result in some differences in privacy standards across the economy, the coordinating agency could work for uniformity on important issues such as the individual's rights to access, correction and non-disclosure.

Summary

This section has attempted to compare the effectiveness of several alternative methods of resolving informational privacy issues in the private sector. Rather than reviewing all the possible approaches, including more stringent government registration and licencing schemes, this paper has focused on those approaches which are thought to be more suitable to the Canadian situation.

The table on the following page contains a comparative summary of the four approaches outlined above. The criteria used for comparison are based on the preceding analysis and reflect the major consideration central to any discussion of regulatory options: the balance between cost to industry and the provision of individual rights or protections to citizens. Terms in the table, such as "Low/Medium/High" are used to suggest relative values only.

Footnotes:

1. See Ontario Consumer Issues 1980 and Ontario Consumer Issues 1983, Ontario Ministry of Consumer and Commercial Relations.
2. A Gallup Survey of Electronic Technology, March 1981, The Gallup Organization, Inc.
3. Neil Vidmar, Privacy and Two-Way Cable Television: A Study of Canadian Public Opinion, University of Western Ontario, 1983.
4. Organization for Economic Cooperation and Development, Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data.
5. The following definitions are used in this section:

Data User: Institution which collects and handles personal information on individuals. Data Subject: Individual who is the subject of data collection.
6. Data Protection Act, 1984
7. Data Protection: The Government's Proposals for Legislation, Home Office, United Kingdom, April 1982.
8. For example, see Roger Noll, "Regulation and Computer Services", in M. Dertouzos and J. Moses, The Computer Age: A Twenty-Year Review, (Cambridge: MIT Press, 1980) and Murray Rankin, Privacy and Technology: A Canadian Perspective (Canadian Institute for Legal Studies, Cambridge University, 1983).

EVALUATION OF ALTERNATIVE SOLUTIONS

A L T E R N A T I V E S

BASIC CRITERIA	VOLUNTARY PRIVACY CODES	LEGISLATED PRIVACY CODES	REGISTRATION AND REGULATION	VOLUNTARY REGISTRATION
Cost of Compliance to Data User	Minimum	Minimum	Moderate to High	Moderate
Flexibility	Maximum	Moderate	Moderate	Maximum
Individual Rights to Access,Correc- tion and Non- Disclosure	No Guarantee	Legislated rights under compulsory version of such a law	Establishes Legal Rights for Individuals	No Guarantee
Individual Rights in Dispute Resolution	None	Costly and difficult for individual to enforce	Through the Courts; Appeal to Registrar Provides Alternative	None
Uniformity of Information Practices	Difficult to Achieve	Possible under compulsory version of such a law	Registration Encourages Uniformity	Some Uniformity Possible
Effectiveness in Developing Overall Standards for Privacy	Low to Medium	Low to Medium	High Potential	Medium

PART B

MAJOR CONFERENCE ADDRESSES

KEYNOTE SPEECH ON PRIVACY: INITIATIVES FOR 1984

THE HONOURABLE NORMAN W. STERLING, Q.C. *
Provincial Secretary for
Resources Development, Ontario

Good Morning,

It certainly is a pleasure to welcome you to the first Inter-Provincial Conference on computers and privacy. It is long overdue. I say the first, because I believe this conference is unique in that we will be exploring issues and options which have never been discussed in a forum such as this before.

Indeed the overwhelming response which we have received for this symposium is most encouraging. In fact, close to 300 members of the industrial, medical and business communities are represented here today. This indicates to me that not only are businesses and governments concerned with the problem, but that this collective involvement also signals the need for us as a nation, to develop a uniform approach to the privacy problem.

In recent years the issues surrounding privacy have been greatly accelerated by rapidly changing and increasingly sophisticated technology systems.

The attendance here today is evidence that we are all affected: governments, consumers, bankers, medical practitioners, and small and large businesses alike.

You know, it is somewhat ironic that although we as citizens view privacy as something precious - something which we cherish and guard closely - there has never been adequate legal recognition or proper safeguards to ensure this right.

Oh, I'm aware that there are some limited privacy Acts in existence; and that the Federal Government has proposed changes to the Criminal Code which will specifically address computer crime. But it is important to remember that these changes will only address the blatant abuses of security - the horror stories which we occasionally read about in the papers.

For example, one of the most extreme cases of abuse which I have heard recently involved a young man who was able to use his home computer to gain access, and consequently change the billing structure of over 6,000 radiation therapy records of patients at a cancer centre in Manhattan.

In one respect, this incursion into privacy is alarming. Yet, because the example illustrates such a blatant breach of security, it will, in many respects, be much easier for legislators to address. The criminal code amendments are however only a very small step.

* Mr. Sterling, who is the MPP for Carleton-Grenville, Ontario, is a graduate of Carleton University, Bachelor of Engineering (Civil). He is also a graduate of the Faculty of Law, University of Ottawa (1969). He was first elected to the Legislature in 1977 and appointed Minister without Portfolio April 10, 1981. He was appointed Provincial Secretary for Justice on February 3, 1982 and Provincial Secretary for Resources Development on July 6, 1983. He is the Ontario Minister responsible for privacy and access to information laws.

The larger, much broader issue at stake is the current free-wheeling exchange and selling of information via electronic means which poses perhaps the greatest challenge to privacy.

Unfortunately, the Canadian emphasis appears to be on modifying existing legislation. I believe, however, that that is simply not enough. It is now necessary to look at developing standards that will deal directly with the much more subtle and broader problem of data control.

While I do not wish to over-dramatize the situation, I think Ralph Nader put it well when he said in 1971: "It is a rare American who does not live in the shadow of his dossier... What the misuse of computers is doing and can do to an individual's freedom (constitutes) a warning of a new form of slavery."

Clearly, this Orwellian vision has not become the reality which Nader states.

On the other hand what has occurred is much more subtle, yet nonetheless equally important. At present, there is no recourse for the individual who feels that the information he has supplied has been used without his authorization. In that sense, perhaps we have become slaves to technology.

When an individual provides information he does so for a specific purpose. He does not do it with the knowledge that the course for this information has only begun what is probably a long journey into a nebulous state of free-flowing data.

To illustrate my point, I will refer to the somewhat simplistic yet compelling case of subscriber lists. I am sure everyone here can relate to what happens should you decide to subscribe to a particular service. Before you know it, you find you are receiving an extraordinary amount of "invitations" to join every other service, which may or may not be even remotely related to the original subscription. Chances are, you are annoyed - but what can you do? Your privacy, although invaded, has not caused any direct harm.

So you toss the "Invitations" and continue with your daily life.

The nagging question though - which never seems to be answered is: How did "those" people get my name, and address? How do "they" know my personal preferences? What else do "they" know? What else are "they" capable of finding out? and most important, How do I stop this? Who do I complain to?

I do not believe that industry's motives are sinister. Rather I believe that most companies handle consumer information in a responsible manner. The primary motive is quite simply one of economics. There is a great deal of money to be gained from the selling of information. And, there isn't anything inherently wrong with that motive in isolation.

The point I wish to stress is not the fact that the information is sold. That is only the tip of the iceberg. Rather, it is the end result which has inadvertently produced a matter of great concern - namely, a citizen's right to privacy.

The complexity of this issue is compounded when the information begins to cross borders, whether they be provincial or international. Commonly referred to as transborder data flow - the emphasis should be placed on the word "border". The current electronic age which we all find ourselves in is making those borders increasingly fluid. The lines are no longer distinct; they have become blurred.

This blurriness has made it impossible for any one jurisdiction to address the privacy issue in isolation. The necessity for a coordinated and comparable approach has been recognized by the Council of Europe.

In 1981, in Strasbourg, France, the Council adopted a Data Protection Convention. The recommendations were signed by 16 participating countries.

When this convention comes into force it will confirm the right of countries with data protection legislation to refuse to allow personal information to be sent to

other countries which do not have comparable safeguards. This could threaten industries with international interests operating in one country, but which process data for customers in many different nations.

At present, four countries - Sweden, France, Spain and Norway-have ratified the convention. In other words, they have not merely signed it, but have enacted legislation. In addition, the United Kingdom has formally stated its intention to ratify, as soon as the Data Protection Bill is passed by Parliament. The Bill which received 2nd reading last March is expected to be passed this summer. A total of five countries are required before the articles of the Convention can take effect.

The legislation proposed by the United Kingdom is interesting in that it encompasses both the private and public sectors. The central feature behind this initiative is the establishment of a Data Protection Registrar and Tribunal. In this respect all users of electronic data systems, with some exceptions, must register. The Registrar would be empowered to examine alleged cases of misuse and subsequently "de-register" data banks which contravene data protection principles.

As well, the Data Protection Registrar can prohibit the transfer of data outside the United Kingdom where the country of destination fails to meet minimum data protection standards. The direct implications of this last point could indeed be tremendous for Canadian companies who do business with the United Kingdom. To illustrate the potential impact, in Ontario, nearly 20 percent of our work force -- more than 800,000 people -- depend on export-related activities for their jobs. In 1982, 40% of the Ontario jobs in the manufacturing sector depended on sales outside Canada.

The hard fact ladies and gentlemen is that unless we develop guidelines governing data protection, future trade discussions could indeed be affected.

To sum up, the issues we will be dis-

cussing during the next two days are far-reaching. For the matter of privacy has, in effect, also become a matter of economy. As governments, we must address the concerns surrounding the protection of individual privacy and general access rights.

For industry, it becomes a bit of a juggling act: these same concerns must be further balanced against a need for information, in conjunction with the cost of implementing privacy safeguards.

In Ontario we have examined the questions of privacy vs access and have tried to strike the difficult yet vital balance between the two in the public sector.

Ontario's proposed privacy and access legislation is focussed on the development of fair information practices for government data banks. The establishment of a Privacy and Information Commissioner will provide citizens with an appeal mechanism concerning the release or protection of documents.

In addition, the formation of a Data Protection Office is also proposed in the Bill. The principal thrust and mandate behind this new initiative will be to provide internal guidelines and to act as a privacy "watch dog" within government.

So, what then are the options for Canada? Enclosed in the Conference Kit is a Discussion Paper on Privacy.

Essentially, the Paper examines options and possible initiatives which could be introduced by both the public and private sectors.

There are four possible routes which we can explore. One, a voluntary privacy code, which I just referred to; two, a legislated privacy code; three, a system of registration and regulation; and four, an approach which combines elements of the first three.

This list is clearly not an exhaustive one. But I suspect that it does offer some "food for thought" and will provide for considerable discussion during the next two days.

From the individual citizen's point of view, the threat to privacy of personal information exists in both sectors. Thus far, however, North American privacy laws have only addressed the issue in the public sector.

The need to broaden the scope and to establish standards becomes readily apparent when one sees that companies with voluntary privacy codes are still the exception rather than the rule. It is clear that the increasing and widespread use of computerized information requires some safeguards. These safeguards must ensure that an individual's right to privacy is not infringed upon.

The voluntary code allows industry maximum flexibility towards the incorporation of data protection standards. It would also be adaptable to changing technology and public requirements. Companies such as Warner Amex Cable in the U.S., and IBM in Europe have already developed guidelines for the protection of personal information in their files. In Canada, it is my understanding that the Canadian Cable Television Association is in the process of developing a privacy code.

While such responsible corporate action is commendable, a uniform approach may be necessary to address privacy problems. Clearly the adoption of various voluntary codes, by different sectors, could result in a patch-work approach.

A compromise between the voluntary code and the more traditional government regulatory solutions lies in the legislative route. In essence, a government could set out fair information practices which would also include a sanction for the violation of those practices. This law would essentially allow for self regulation of industry and would permit legal remedy.

While this option does contain some benefits, it does not really provide a practical solution. Realistically speaking, I don't think many individuals would undertake the time and cost that is involved in pursuit of a civil lawsuit.

On the other side of the coin exists the option of complete registration and regulation. This basically is the approach which has been taken in the United Kingdom Data Protection Bill. Essentially, government would be empowered to: give individuals defined rights to access and correction; regulate the collection and third party disclosure of personal information; and guarantee the security of data by establishing a registrar with investigation and enforcement responsibilities. In short, the collection of personal information in an electronic data bank becomes a privilege and not a right.

The fourth approach is a combination of the three I have just discussed. Essentially it involves a combination of self registration and regulation.

Associations would be encouraged to develop privacy codes tailored to their industry. An internal monitoring system would be a very positive force towards ensuring compliance among industry. In cooperation with a public Privacy Office, a registry could be maintained of all participating associations and companies.

I think it is important to stress that governments must not over-react. Industry must be allowed the opportunity to respond to these new challenges in a reasonable and responsible manner. Before we all embark on an "Anti '1984' crusade", let's examine the alternatives closely.

I am confident that given the opportunity and the interest shown here today, by both the public and private sectors, we will be able to further our dialogue in a meaningful and constructive fashion.

Thank you.

PROTECTION OF PERSONAL INFORMATION IN THE U.K.:

THE DATA PROTECTION BILL

THE HONOURABLE DAVID WADDINGTON, Q.C. *
Minister of State for
The Home Office, United Kingdom

Mr. Sterling, when I was in the Department of Employment, where I was a Minister before being moved to the Home Office, I was minding my own business one morning and a secretary came in and said the Secretary of State is ill, here's a speech which he was going to make in the City of London, go off and make it and as I was in the car reading the speech feverishly, I said aloud, this is the dulllest speech I've ever read and my secretary said, don't worry, Ministers are supposed to make dull speeches. Well, I shall try not to be too dull today.

I must tell you that when I went into the Home Office, not actually in January this year but in January of 1983, I knew that I was going to have to grapple with the problems of immigration and nationality, but I didn't really know what was coming to me. I certainly knew nothing whatsoever about privacy and data protection. I've now lived with the subject for a year and a half, I'm still learning, and one thing I've learned in Canada, is that in many respects you've got more experience in this field than ourselves, but I think that there is value to be gained from sharing experiences, so here goes.

I must be careful that we're more than usually careful, not to be divided by our common language and I better say a word or two about terminology. It's been brought home to me in the last 48 hours that many people here look upon

freedom of information and privacy as part and parcel of the same problem, or the two sides of the same coin. We don't look at it in that way.

When we talk about the possibility of our passing a freedom of information bill through Parliament, we mean a bill which would reflect the commonly held view that there are certain activities of government, at present kept secret, which ought to be in the public domain.

When, on the other hand, we talk of privacy, we're expressing the notion that there is a part of the ordinary citizen's life which is peculiarly his own and should be free from outside interference or unwanted publicity.

Now we in Britain have always shied away from legislating for a general right of privacy. Privacy means different things to different people and, quite frankly, we take the view that if we were to establish a general right to privacy, nobody would have the faintest idea how the courts would handle the matter and what they would find to be a breach of the right of privacy and what they'd not find to be a breach of the right of privacy.

But what we have come to accept is the need for legislation in respect of one specific aspect of privacy and what now concerns an increasing number of people in the U.K. as elsewhere, is the particular threat to individual privacy

* Mr. Waddington, M.P. (Ribble Valley), is the Minister of State for Home Affairs, United Kingdom, responsible for immigration, nationality, community relations, voluntary services and data protection. He was responsible for steering the Data Protection Bill through Parliament.

posed as a result of information being held about individuals on computer, so very near to the end of its passage through Parliament, is what we call our Data Protection Bill.

It's not a very elegant name for a bill, but the term data protection has been in use in Europe for a long time now, so it really wasn't sensible to depart from that terminology, and call our bill, for instance, a Privacy Bill, but it is a Privacy Bill, it is not a Freedom of Information Bill.

Now, our bill differs greatly from your Federal Privacy Act. In one key respect, it does far less to enlarge the rights of the individual citizen, because it does not apply to information held about him, but only automatically processed data, i.e., personal information held on computer, but in another respect, as you'll all now know, it goes much further than your act because it covers the private, as well as the public sector and I should be talking a little about that later.

Now to make our approach begin to make sense, one has to go over a bit of history. Partly in response to the fears expressed by people about the possible threat to privacy posed by computers, in 1970, the Labour Government of the day set up a committee called the Younger Committee, named after a former Minister in a previous Labour Government and that Committee had a mandate to consider whether legislation was needed to provide protection against intrusions into privacy. The Younger Committee reported in 1972, and amongst other things, it recommended that computer users should voluntarily observe certain principles of information handling, and that the Government should legislate to set up a standing committee to keep the observance of the principles and the use of computers under review and make proposals for further legislation.

Well ladies and gentlemen, we've got many virtues as a nation, but we don't go in very often for sudden bursts of activity following the publication of

the reports of committees, and I understand that that is sometimes something we share with you. By the time the Younger Committee reported, a Conservative Government was in power, and our Conservative Government, perhaps unlike your Conservative Governments, are perhaps even more reluctant to act on the recommendations of committees so nothing whatsoever happened. In 1974, the Labour Government won the election, and we were all keyed up for dramatic action but nothing followed - not for two or three years - and then what did they do, they set up a committee.

They set up the Lindop Committee which did not report until 1978 and in 1979 defeat at the polls relieved Labour of the whole problem, some hope for all time. Now that might have been the end of the story. The by-partisan policy of masterly inactivity could have continued for a very long time and certainly seen out my time in Parliament, which might have been better for my career, but some of us haven't reckoned with the goings on of our friends in Europe.

In Europe, the tradition of remitting difficult decisions to sedate committees isn't as refined, as advanced as in Britain, and legislation had already been passed in a number of places.

Now the front runner was the West German Province of Hess, and Hess legislated on this matter as long ago as 1970. Sweden followed suit in 1973, and by the end of the seventies, Germany, France, Norway, Denmark, Austria, Luxemburg, and Iceland, all had their data protection bills, all different from each other I might say, but all bills dealing with this field of personal information stored on computer.

Most important of all, a multi-national initiative had taken place in 1981. The Council of Europe had produced a convention, a convention which set out certain principles for data protection that users of computerized information should observe and which enjoined member states to pass national legislation to give effect to those principles.

The position is that now four states have ratified the European convention. The convention says that it comes into operation when five states have ratified and therefore, no state can afford not to be looking very carefully now at its own position. Why? Because while the convention prohibits ratifying countries from in any way interfering with flows of data to other ratifying countries, a ratifying country can prohibit the export of personal data to a country which has not ratified.

So, it may interest you to know ladies and gentlemen, that unlike what I understand to be the position in Canada, we, after 1981, were faced with pressure to legislate, not just from those concerned about civil liberties and privacy, but also from a sizable chunk of industry concerned that Britain might find itself the odd man out in Europe, and that flows of data to and from Britain could be interrupted because of fears in another country that we did not provide adequate safeguards for the data. So there is one dramatic difference, as I understand it, between your situation and ours.

The result was obvious. A decision to legislate, not for all personal information, but, where the perceived threat to privacy was the greatest, and where the convention obliged us to legislate in the field of what the convention refers to as automated personal data files.

Now I'm sure I'm right when I talk about the perceived threat being computers. Of course, manually stored information can be misused, but the public concern, certainly in Britain, is and always has been focussed on computers and I can give a very good example of that.

Last year our Department of Health and Social Security decided to issue people with computer-readable plastic national insurance cards in replacement of the old cardboard cards. The same information was to appear on the new card as the old, just the individual's national insurance number, the purpose for which it was to be used was iden-

tical so that the individual could give a number when making his claim, but the result of that announced change was uproar.

Uproar because the public realized that machine-readability meant that in theory the information on the card could be transferred to others in the twinkling of an eye and then linked with other computerized information, even though in practice there were going to be no changes at all in the use of the information.

Now, of course, ladies and gentlemen, there was another reason why we never thought of extending the legislation to manually stored information - sheer practicality.

No doubt, I will hear from some of you afterwards what I think of the practicality of our legislation which covers almost everybody in the private sector, but certainly we thought that the prospect of extending this form of legislation to every box file in the country, was something to make the imagination boggle and we certainly weren't prepared to countenance it. In our minds that would be the road to a massive bureaucracy and a horrendous expense.

But even if the convention has not required us to cover the private sector, in the field of personal information on data files, we might have grappled with that mettle. I agree with the implicit assumption in provincial and federal legislation in Canada that the main concern, and the principle target, is government.

In my experience certainly when people talk of their privacy being threatened, they normally are talking of their privacy being threatened by government, but so long as one is talking about privacy, and not freedom of information, the legislation logically cannot be restricted to government.

One only has to think of the information that exists on employers' staff records, to appreciate how much harm may be done by inaccuracies or misleading statements, or by damaging disclosures of that information to others.

But what, Mr. Sterling, was to be the form of this legislation to cover only information on computer, but both the private and the public sector? We wanted data users to discipline themselves, but we did think that it was essential that the new obligations which we believed data users had to face, had to be brought home to them, that there was a lot of educating to be done, and that the best way to do this was through a system of registration, so registration it is.

Registration is a feature of most European data protection schemes and will force data users, large and small, public and private, to lodge particulars of their operations on a central register.

Under the bill, they have in registering to describe the personal data they hold (it only applies this obligation to personal data) and the requirement to register is a requirement to be imposed only on data users who are storing personal information, but they have in registering to describe the personal data they hold, the purposes for which they hold them, the sources of the data, and to whom they disclose the data.

It's important to note that that will involve them in a deal of self-scrutiny. It will make them consider what computer systems they actually possess, what data they hold there, and whether their uses of data match up to the general standards prescribed by the bill and, in addition, of course, the publication of a public register will bring out into the open what users are doing with the personal information they hold.

And, what are the standards data users will have to observe? Well, the convention contains certain principles to be observed, principles that were, in turn, drawn from the Younger Report and which have now, if I may use the expression, been repatriated to Britain.

We've won back the principles which actually were formulated by Younger.

We haven't just translated those principles into legally enforceable obligations, they are not specific enough, they're too generalized for that, but we have nonetheless embodied them in our legislation and there is going to be a data protection registrar, not dissimilar to your own privacy commissioner, to supervise their observance.

The result will be that if any data user contravenes any principle, the registrar will have power to take action against him, and can order him to take whatever steps may be necessary to come into compliance with that principle, including erasing the offending data.

It is then made an offence for a user not to comply with the registrar's order and right at the end of the line there is the power in the hands of the registrar to say to a data user who won't obey his order, right, I'm going to serve on you a de-registration notice, which means that thereafter it will be illegal for you to carry on your operations.

The principles are worth spelling out. First, the data should be obtained fairly and lawfully, thus if in the registrar's view data has been obtained by unfair means, perhaps somebody has been misled as to the purpose for which they will be held, the user will be in breach of the principles and may be ordered to erase the data.

Two, the data should be held only for specific, specified and lawful purposes, purposes specified in those registration particulars to which I referred. Third, the data shall not be used other than for those purposes specified in the registration particulars. Four, and here we come to the nature of the data themselves, the data held for any purpose shall be adequate, relevant and not excessive in relation to that purpose.

Five, they shall be accurate, and where necessary, kept up to date. Six, they shall not be kept for longer than is necessary for the purpose to which they are held.

The seventh principle deals with the matter of subject access. Individuals

are entitled to know whether data are held about them, to keep a copy of the data, and where any of the other principles has not been conformed with to have data corrected or erased.

And finally, the eighth principle, deals with security. It provides that appropriate security measures should be taken in respect of data held so a persons' privacy is not imperilled because of the slackness of the operations of the data user and unauthorized persons getting access to it.

What is perhaps worth emphasizing, is that in the generality of cases an individual will get the remedy he wants by going to the registrar, and he will not, under our scheme, have to go to the trouble and expense of bringing an action in the courts.

On the other hand, in certain respects the citizen will have a dual remedy. He can go to court for instance, for rectification or erasure of inaccurate data, or when he has been refused access to data, but those are both situations when he could, in any event, have gone to the registrar and said that this data user is holding inaccurate information about him.

I should mention one specific power of the registrar in view of what is going to happen in the next session of the conference. The registrar has power to step in where exports of data are concerned, transborder data flows, or TBDF in the jargon.

He can prohibit transfers of data to countries that have not ratified the convention if, and this is important, but only if, in his view the transfer will lead to any contravention of the principles. So we've armed our registrar with direct enforcement powers, his decisions are appealable to a special judicial tribunal, but if they are upheld by the tribunal, it will be an offence to defy them.

He is an enforcement agency with very real powers, he'll be wholly independent of government, he'll be appointed by the Queen by Letters Patent, he will

set up his own office and employ his own staff. The size of the staff? We envisage only twenty to thirty. We've no intention of giving birth to a vast bureaucracy, we want the system to be effective but to do its job without undue cost to industry. We've been conscious the whole time of the need to strike a reasonable balance between the rights of the data subject on the one hand, and the rights of the data user on the other, recognizing that the imposition of excessive costs on industry could lead to new costs on society as a whole, in terms for instance, of more unemployment. We are determined that registration should be a simple process costing only a few pounds a year.

We also hope that it will be possible to set a charge for subject access, which will in the vast majority of cases, cover the cost of business of granting access, but we will always have to bear in mind the requirement of the convention that subject access must be granted "without excessive expense".

Businessmen please note the following:

(1) We rejected demands that users should have to inform individual data subjects that data were held about them. We considered registration was as far as we could go;

(2) We rejected demands that users should log (a) disclosures, and (b) receipts of data, and we rejected any obligation to tell subjects, individual subjects, of individual receipts of data or disclosures of data;

(3) the bill makes special provision for what we call in the bill, received data, to ensure that users are not required to pay compensation for the holding of inaccurate information received from others as long as that information received from others is marked as such on the data file;

(4) The bill allows a full two years from Royal Assent for users to make the necessary arrangements before the new legal obligations are to be enforced.

We look upon the registrar as far from a dictatorial figure. We see him as assisting data users to understand good data protection practice. We intend

that he should take the initiative himself in spreading the gospel of data protection, giving publicity to the work he's doing and the new rights provided in the bill.

He'll be under, for instance, a statutory duty to encourage groups such as trade associations who represent data users to produce their own codes of good data protection practice in order to assist their members in complying with the principles and so as to reduce, we hope, to the minimum, the number of cases where people actually have to be sanctioned.

We're not so starry-eyed as to imagine that all mistakes and abuses will be prevented, and the registrar's powers to impose sanctions will be needed from time to time. But in structuring our legislative provisions, we have endeavoured to come up with a system that encourages and helps users to put their own houses in order, rather than to concentrate on punishing those who do not.

Just a few words on the response our legislation has had. Data protection is a complex subject and I defy anyone to produce a bill that will suit everyone. But I think we've seen, during passage of the bill, a growing realization of the positive benefits that data protection can bring.

The more far-sighted data users in the private sector are beginning to realize that the necessity of considering their use of computers to hold personal information, the necessity to comply with good data protection practice brings benefits as well as burdens. A number of users are now saying to us that they are surprised how much weeding of files they are finding themselves doing as they prepare for the legislation to come into force.

Much valuable computer practice is being freed for new users. Higher standards of accuracy which the bill will encourage, can only be to the advantage of data users as well as data subjects.

Now finally, Mr. Sterling, I'm not, as you may have gathered, a data protection zealot. In my view, the case for legislation on privacy, on privacy grounds alone, was a very finely balanced one. The number of serious cases of misuse of information brought to our attention was very small, and I don't believe that it's right to introduce legislation without a real need for it being established and without there being a prospect of real benefits flowing from it.

But when the commercial considerations prompted by the convention were added to the plain privacy dimension, and when added also was the importance of calming public fears about the new technology in order to remove barriers to the introduction of computers, then to my mind the case for legislation was proven.

I have no doubt that the situation in Canada is very different. Certainly it would be futile as well as impudent of me to promote our bill as a model to be followed here. Legislation can't be bought off the international peg, and it must be tailor-made to the individual society's needs and must take account of the social, administrative and constitutional background that applies in the case of each country.

Nevertheless, in framing our legislation, we found it helpful to look at how other European countries had sought to cope with the myriad problems that data protection legislation throws up.

I doubt whether our approach in the U.K. will furnish you with many outright answers, but it may give you some help in determining whether to embark on a remotely similar exercise here in Ontario, and I certainly hope that it may have calmed some of the fears of industry and commerce.

Thank you very much for listening to me.

THE PRIVACY ACT: HOW IS IT WORKING TO DATE?

DR. JOHN W. GRACE *
Privacy Commissioner of Canada

One of my favourite observations about the privacy business is a reason why I like my job. It is this: privacy cuts across ideological boundaries. Wherever one is located on the ideological spectrum, there is a shared interest in the values we are here these days to discuss in order to protect and to enhance them.

Some of us came to privacy from different starting places and in different ways. But we end up, whether from the public or the private sector, whether liberal or conservative, asserting that the claims of privacy are essentially claims of respect for human individuality and, ultimately, for human dignity.

A person is diminished by the loss of control over the little pieces of himself or herself tricked out by the supposed needs of society, catalogued, compiled and cross-matched, sometimes for no other reason than that wondrous machines need to be justified.

My twin teen-age daughters recently came home with a record on which Michael Jackson (yes, the Michael Jackson of which there is no other) and someone called Rockwell sing these lines:

"Somebody's watching me
Ain't got no privacy."

It was, they said, my theme song.

Of course, I immediately adopted it. The re-iterated cry from a hero of popular culture that his quality of life is suffering because he "ain't got no privacy", was the ultimate

approbation for the need of a privacy protector. Indeed, for one shining moment, this song rose to first position on, as they say, the pop charts. Privacy made the top ten.

What more do any of us need to justify our being here? We may all bask a little in the reflected glory of responding to the plaintive lament, semi-literate though it may be, of Michael Jackson and Rockwell. Privacy, as I say, knows no ideological barriers.

I am delighted to have been asked to tell you something about the federal Privacy Act. I am billed specifically to address the entirely reasonable question: "How is it working to date?". I will not evade my responsibility. But I am going to tell you how it works before I tell you something of how it is working. I want to take the time to explain the Privacy Act, my role and how I perceive that role.

The first thing I have learned since taking over my job about a year ago is that privacy is a hard subject. I learned that before I came to believe that privacy is an important subject and the Privacy Act is a complex piece of legislation. It is full of talk of "banks" which have nothing to do with money, talk of "exemptions" which don't help at all in tax returns, talk of "access" which has nothing to do with roads, and "compliance" with nothing to do with either loose morals or consenting adults.

I am still little better than an instant expert. But my advice based on hard experience is not to assume either a wide or a deep knowledge of

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privacy concepts. The distinguished coterie of experts with us understand the terms of the privacy trade; indeed, many of the terms and definitions are theirs. But I find, even in the public prints, an astonishing and an abiding - if invincible - ignorance of how my piece of privacy legislation works. Hence, this primer.

The Privacy Act is about the protection of personal information held by federal government (not provincial or private) institutions. Personal information starts with names and its definition goes on to include, among other things, addresses, fingerprints, religion, marital status, identifying numbers and opinions.

The Privacy Act grew out of Part IV of the Canadian Human Rights Act. In its own words, the Privacy Act extends "the present laws of Canada that protect the privacy of individuals with respect to personal information about them held by government institutions and that provide individuals with the right of access (there's that word "access") to such information".

Now there are exceptions to the right of access a person has to his or her personal information. There is argument over some of the exceptions, arguments that are inevitable and healthy. Some critics of the Act think that the exceptions go too far in circumscribing the right to privacy. One hand denies what the other hand gave, some say.

Here are the principle exceptions and I leave it to you to decide if they are reasonable or unreasonable.

1. Information received in confidence from a foreign state, a provincial or municipal government;
2. Information which could be injurious to the enforcement of any law of Canada;
3. Information which would disclose information about another individual;
4. Information subject to solicitor-client privilege.

I suggest that these are all defensible exceptions and a good case can be made for each one of them. What I do caution against is the temptation to claim too broad exceptions for the first kind of information, in particular, information conveyed from a provincial to the federal government. Everyone in government wants to be cautious in a new era of privacy Acts. That is understandable. However, nothing will cause a privacy act to lose credibility faster than invoking exceptions to deny information which would have been released without a privacy act. I am seeing a few such occurrences.

The new Canadian Privacy Act also protects an individual's privacy by preventing other persons - again, with certain exceptions - from having access to that individual's personal information. This set of exceptions allows the release of personal information to a third party for such reasons as:

1. To comply with a legal document such as a warrant or subpoena;
2. To an investigative body, such as the RCMP, to enforce a law;
3. To a member of Parliament to assist a constituent when the information relates to the constituent.

Again, there will be argument over some exceptions and the extent of the exceptions. But there can be no serious quarrel with the principle of exceptions. Privacy, like most rights, cannot be absolute. I think it important that privacy advocates be the first to acknowledge this as they enunciate privacy principles. In an open society a dynamic tension will always be in play between the individual's right to protect and to know his or her personal information, and the state's perceived duty to the public interest. We are usually talking about competing goods; not good versus bad.

Particular kinds of personal information which are not available upon application under the Privacy Act are designated as exempt from access -- another term of art. Such information may be contained in information systems which are totally

exempt. Nineteen of a total of some 2200 banks are thus designated. Some personal information in accessible banks may also be exempt from the general right of access. It is these exceptions and exemptions which mean business for the Privacy Commissioner.

The architects of the Canadian legislation had before them the model of an American privacy act where there was no Commissioner. Persons who believed that they had been denied privacy justice had (and still have) no recourse except to apply to the courts for relief. Ged Baldwin, who perhaps more than anyone else is responsible for the existence of a Privacy Act in Canada, has told me that he hoped that the existence of a Privacy Commissioner would save excessive and expensive recourse to courts already overburdened.

Thus, the Privacy Commissioner, with the full powers of a Superior Court Judge, investigates complaints by individuals who think that they have been denied rights concerning their personal files. Because he can be appointed only after a joint resolution of the Commons and Senate, he is independent of government, responsible to Parliament. In order to be effective, it is essential that a Privacy Commissioner enjoys such independence and is not perceived as an agent of the government of the day.

In his role of acting on behalf of individuals, and investigating their complaints, the Privacy Commissioner is a specialized ombudsman. But seeking privacy rights for complainants does not always mean that the Privacy Commissioner will recommend release of personal information. That misconception has arisen recently.

The Privacy Commissioner's duty is to assist individuals in achieving what they are seeking. But the Commissioner cannot manufacture privacy rights. He can only recommend rights to which complainants are entitled. To recommend always in favour of the complainant may give the Commissioner and the public some psychic satisfaction. But

the Privacy Commissioner has wider responsibilities under the Privacy Act which cannot be abdicated for the sake of a popular decision. It is naive and simplistic to suggest that the Commissioner recommend in favour of a complainant, whatever the Privacy Act says or whatever the facts of the case. In the long term, such excess would be harmful to the cause of privacy protection.

Once the Privacy Commissioner has all the facts and the balance seems even, he will decide in favour of the individual seeking his personal information. If he is allowed any bias, it is towards the complainant. But to deny the wider provisions of the Privacy Act and to ignore the restrictions which Parliament placed on an absolute right to receive personal information would be to flout the law. Hardly the appropriate role of an ombudsman, no matter how dedicated!

In addition to responding to complainants, the Privacy Act imposes the duty upon the Privacy Commissioner to monitor and report to Parliament upon the manner in which government institutions collect, retain and dispose of personal information. This responsibility, still not generally recognized, broadens the nature of the Commissioner's role beyond that of ombudsman.

He is what I call an auditor-general for privacy, examining files in order to determine whether the personal information they contain is appropriate to the work of a department or agency. The closed or exempt information banks compel themselves particularly to the attention of the Privacy Commissioner. He is the only outsider who can perform an audit of these banks. The possibility of such an audit should have a salutary effect upon the standard of government record-keeping.

Of course, there will always be complaints and the need to investigate them effectively cannot be over-stated. But in the long term, the audit role will be at least as important as complaint-handling. If privacy protection principles are followed, individuals will have no valid reason to complain. Such a state of privacy perfection may be

impossible to attain. But that should be the goal.

The challenge of performing effective compliance auditing is daunting. There will be no army of auditors; nor should there be. The goal will be to make effective use of a small number; my initial complement is five.

A few more facts about the Canadian Privacy Act: for the first time, a complainant may apply to the Federal Court for a review of a refusal of an application made under the Act. In order to go to the court, it is only necessary that a complaint be first investigated by the Privacy Commissioner, not that the Commissioner's finding was favourable to the complainant. The Privacy Commissioner himself is empowered to apply, with the complainant's permission, to the same court for a review of a refusal to accept his recommendations made on behalf of an individual.

The Privacy Commissioner does not have the authority to make an enforceable order. If he finds a complaint is justified, the Commissioner then makes a recommendation to the head of the government institution that the original decision be modified.

If the government institution refuses, the Commissioner has other recourse than asking for a review and an enforceable court order. He may report this denial to Parliament in his annual report, or, if he considers the matter sufficiently urgent and important, he could make a special report to Parliament. The efficacy of the threat of such reports on public service managers should not be underestimated. The Privacy Commissioner is not a toothless tiger; far from it.

But his effectiveness rests essentially on moral suasion and on credibility. The independence and integrity of his office, the importance of judicious decisions cannot be over-stated. If the Privacy Commissioner made findings unsupported by the authority of the Privacy Act, he would deserve to be written off as a captive of a populist fancy.

That's the overall view of the main lines of the Privacy Act, with a little homespun philosophy. The question "how is the Act working" will take less time.

The easy way out would be to say its too soon to tell. That would be safe and justifiable. But I think I can say that the Privacy Act is working much better than some of its critics had predicted. And it is certainly not too early for me to report that Canadians are using their Privacy Act. In the first six months after the legislation came into force, almost 10,000 requests for personal information were received by federal institutions.

The statistics are the more impressive because all these applications have been made without benefit of a publicity campaign. You do not hear television commercials or read advertisements telling you of your rights under the Privacy Act. Perhaps you should: I'm not sure about that. Certainly, I have no mandate to conduct such a campaign. This is privacy, not "Participation".

But it is 1984, a year which George Orwell single-handedly has caused to be an international year of data protection. Moreover, privacy applications are free, and the fact of a new Privacy Act gave an initial impetus to applicants. A truer test of public use of the Act will be next year's statistics.

Privacy requests usually obtain results: 80 percent of applications received all or part of the information they sought; only three percent of requests were totally denied.

During this same initial period, 140 complaints were made to the Privacy Commissioner, all of which will receive formal findings.

Three of these cases have gone to the Federal Court for review. The first judgment was handed down a couple of weeks ago by Mr. Justice James Jerome. He upheld the decision, made by a federal department and concurred in by the Privacy Commissioner, to exempt certain personal material from access by a complainant. Three cases in almost a

year: certainly no flood of litigation. I cannot say how many cases the Privacy Commissioner succeeded in keeping out of court.

What I can say, however, is that in a significant number of complaints the intervention of the Privacy Commissioner's office resulted in changes of original decisions in favor of complainants.

Here the role of privacy co-ordinator - those persons named by each government department and agency to handle Privacy Act matters - is crucial. The importance of effective co-ordinators to the proper functioning of the Privacy Act can hardly be over-estimated. I am pleased to be able to say that many co-ordinators are superb professionals. The presence of some of them at this conference is its own tribute to their seriousness and commitment to what might have been perceived in a department as a rather suspect violation.

In addition to complaint handling, the Privacy Commission is becoming a clearing house for queries about privacy. These queries require responses rather than a finding. Responding to such questions and concerns is a function of this office which I think important. It means that the Privacy Commission is being recognized as a resource centre.

You may be interested, though perhaps not surprised, to learn that a large number of questions are about a subject which is not mentioned as such in the Privacy Act: about the use - and abuse - of Social Insurance Numbers. That's another speech!

The Public Service of Canada has lived with privacy legislation for more than five years. The Act means that another regulator is looking over the shoulder of public servant managers. But I can report a remarkably high level of co-operation and support. Privacy no longer needs to be sold.

I have been talking about legislation, the legislation in which I play a part. But privacy protection need not

wait for new laws coming into force. I commend initiatives now being taken in the private sector where codes of personal information principles and practices are becoming part of company policy. A time may come when a data protection audit is as commonplace as a financial audit.

The public is not going to tolerate two standards of privacy protection: a relatively high standard for personal information held by the federal government and an indifferent or inadequate standard for provincial governments and the marketplace.

Federal public servants now have access to their own personnel files as a matter of right under the Privacy Act. Employees who may not see their records are going to feel like second-class citizens. They will not be long satisfied with such status. They will achieve those rights, as some have already, under collective bargaining agreements or through the political process.

Of course, many provisions of the Privacy Act go against the political and bureaucratic grain; against an honourable and paternalistic tradition of using personal information in the best interests of government, not necessarily of the individual. These same provisions also go against imbedded instincts and practices of the private sector. The Privacy Act may make the challenge of running an efficient bureaucracy or a business more difficult.

But I should remind you that a broader application of privacy legislation was foreshadowed by the Honourable Francis Fox, the Minister of Communications, in speaking to the Commons during passage of the present Act. He said that the expansion of the number of government institutions covered by the Act "paves the way for the next stage in the development of privacy legislation, extension of the principles respecting the protection of personal information to the federally regulated private sector". There should be no surprises.

Privacy protection, limited though it has been, is nothing new. Confidential-

ity has been enshrined in the medical and legal professions. It is very much in the interest of banks to guard the privacy of their customers. Cable and computer companies also have a vested interest in data protection.

Why, then, the need for legislation and voluntary privacy codes? What is new, is the computer and its wondrous works. The ability to store and communicate vast quantities of data has made a quantitative as well as a qualitative impact on our society because information is power. And that impact has the potential of changing the balance between the individual and the state, between the individual and the private gatherers or storers of information.

Those of us who work as data protectors are doing nothing less than trying to see that the balance is not tipped dangerously against the individual. That is a bold, even a presumptuous, claim. But it is a claim for human freedom and dignity, one that I am proud to make.

PART C

CONFERENCE PANELS

PANEL 1: PRIVATE SECTOR PANEL: "PRIVACY: THE PROBLEMS DEFINED"

CHAIRMAN: Jake Knoppers *

PANELISTS: James L. Kirschbaum
Dr. William R. Ghent
Ross McFarlane, Q.C.

COMMENTATOR: Professor Peter Burns **

* Mr. Knoppers, based in Ottawa, has been a specialist in the area of information policy and information technology for a number of years. He is Senior Vice-President of Infoman Inc., a company specializing in information management services.

** Professor Burns graduated in law from Otago University in New Zealand with both LL.B and LL.M in 1963. He was a Barrister and Solicitor with the Supreme Court of New Zealand before coming to Canada. He has been actively involved with the Canadian Bar Association and many other groups as well as working as a consultant. He is the Dean of the Faculty of Law of the University of British Columbia and is widely published in the legal field including works on privacy and the question of the protection of personal information.

NOTE: Bio-data on all Conference participants is included in this publication. The title page for each panel will cover Panel Chairmen and Commentators. Bio-data on Panelists is given on the first page of each panelist's presentation.

PRIVACY ISSUE:

THE PROPERTY & CASUALTY INSURANCE INDUSTRY

JAMES L. KIRSCHBAUM *

Chairman and Chief Executive Officer of
Fireman's Fund Insurance Company of Canada

Four years ago I arrived in Toronto. Believe it or not my wife's primary motivation in agreeing to the move was the fact I could use the transit system as an alternative to a busy freeway. So blissfully I headed for the subway station for my first day in the office. Since I had an empty briefcase I stopped and purchased a newspaper. Settling back to enjoy the leisure and the news, I was amused to read the headline "Insurance Companies Now Want to Know About Your Sex Life".

My amusement turned to shock when I discovered the insurance company was none other than my own, Fireman's Fund of Canada. The story was picked up all across North America and needless to say, the first day on the job turned out to be vastly different than originally planned. Actually, our program was a pretty good one -- psychological testing of impaired drivers. The self-administered tests were designed to separate the person who learned his lesson from the chronic drinking driver. Before the day was out I was in Frank Drea's office -- he was then the appropriate Minister.

Once we cleared the initial emotional issue with reporters, the only unanswered questions had to do with -- the use, the control and the safeguarding of the information gathered.

I was pleased to learn we had carefully considered the privacy issue. Our insureds completed the questionnaires and returned them direct to us in a specially addressed envelope. One person received them and opened and evaluated them one by one. The evaluation rating only was sent to the underwriter who never did see any of the information. All the responses and results were kept in a locked file to which no one else had access.

As part of my orientation and because of this experience I was pleased to learn the company had a very comprehensive written privacy code. This is gone over with all employees on hire and periodically thereafter. It has been reviewed from time to time for adequacy and application and so far has proven to be very effective.

It is a pleasure to be a participant in this conference and to have this opportunity to represent the Insurance Bureau of Canada. The latter is an organization consisting of 95 companies and company groups who write approximately 80% of all the Property & Casualty business in Canada.

In turning back the clock some ten or fifteen years ago, the whole subject of

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this conference was of major concern to many. At that time increased computer usage was coming in to vogue which triggered a rush to gather new and expanded data. Secondly, occurrences at the time, coupled with events of the then recent past, were being interpreted as or associated with perceived improper gathering and use of information. For example, in many parts of the world there were lingering memories of World War II and the adverse impact information, whether right or wrong, could have on individuals or even entire nations. In the U.S., disclosures about FBI and CIA activities and the Watergate incident helped focus attention sharply on the whole subject.

Many very significant changes have occurred in the Property & Casualty Industry since 1970 as respects information. Contrary to initial concerns or even fears, the age of computerization has not led to problems and abuses. In fact, just the opposite has occurred.

With changed environmental factors, acceptance of different social and behavioural conducts and relationships, new underwriting concepts and techniques, the need to have so-called private and personal information about insureds and/or applicants has changed dramatically. Twenty years ago, underwriters ordered and maintained reports on nearly all individual insureds. These were obtained through independent investigative firms who reported the information from file data and interviews of neighbours and business associates of the insured. Reports were generally fairly lengthy and often very subjective and new ones were periodically ordered with cumulative files maintained.

Presently such reports are very objective and consist largely of factors which are readily adaptable to computer application such as motor vehicle convictions. They are still ordered through independent investigative firms who now nearly always interview the insured or applicant directly and rarely will go to others. The reports are used primarily for confirmation or

verification purposes and most companies order them on a fairly small percentage of their insureds.

In the Property & Casualty business, underwriters rarely obtain and use medical information. In those limited instances when they do, physician reports are requested directly through the insured. Most such requests involve automobile insureds and the reports are obtained to verify their current physical condition as it would pertain to their ability to safely operate a vehicle.

Both claim and underwriting files, whether electronic or hard copy, are treated on a very confidential need to know access basis. Further, the employment of such data has been cut back significantly hence the frequency of utilization of files has dropped dramatically. Accordingly, files are simply not out being reviewed and worked on to the extent they were in the past thus reducing potential unauthorized exposure.

In addition, the use of new sophisticated computer security systems, for the data stored electronically, ensures the availability on a "need to know" basis within a company.

Underwriting reports are still referred to as credit reports but it is a generic term only. The so called underwriting credit report usually doesn't provide indepth financial or credit information about a policyholder but rather deals only with information pertaining to the ownership and/or use of the vehicle and factors which reflect the driving experience and/or record of the insured.

With respect to claims, outside reports are ordered on a very small percentage of cases. When they are, they deal directly with some element of the adjustment process which requires outside review and/or verification. They could deal with specifics relative to an individual's financial position since that could have a direct bearing on the settlement process. Also, Claims Adjusters will on occasion order surveillance investigations. These are to determine or verify the degree to which somebody

might be disabled or the extent of injury or damage.

A very decided change has taken place relative to the gathering and sharing of medical information as respects claims. The Industry practice is to obtain and/or share only with the written consent of the insured or third party. Frequently this information is done on a physician to physician basis. Such information and results are treated on a particularly confidential basis with only very limited access. Adjusters today will confirm existence of an injury, for example, but will not share medical information with others unless authorized to do so in writing by the injured party.

There are some misconceptions about the amount of information insurance companies have on people and the degree to which that is shared. There simply aren't any large information data bases in existence either overall or within specific companies. Most companies still do not have very sophisticated linkage of data internally and literally nothing in the way of linkage exists on a multi-company basis. About the only information shared, and this is on a very informal and limited basis, is specific experience information or claims history. The industry does share premium and claims information for overall statistical purposes but this is not by individual insured. Also, where evidence points to potential fraud or other potential criminal activity a company may provide information to an industry sponsored crime bureau. Such cases are fortunately very limited. This organization is staffed with professionals who work very closely with law enforcement agencies.

Some people are under the impression insurance companies sell lists of customers to others. We certainly do not and to date I have been unable to come up with a single other company which employs that practice. Also, some people have expressed concerns about what they perceive is the improper use of telephone soliciting. Some agents

and brokers do use the telephone extensively for solicitations. The practice however is fairly limited and has been going on for decades.

With respect to personnel files, I again found significant change especially with regard to what information was collected and how such information was maintained. Because of the dramatic changes in this regard, personnel files today are much slimmer than they were previously. Again, very tight security is maintained.

Quite frequently people will call requesting information about our people. We have a very formal and rigid policy about this and simply do not respond unless authorized by the employee involved to do so.

Since we operate basically in a "white collar" environment, our Workers' Compensation exposures are minimal and we simply don't have medical files on our employees.

Companies now make provision throughout for easy correction to any misinformation which may be developed. With a voluntary access program to one's personnel file, we have experienced minimal numbers of requests from people to examine our files on them. My people feel this is in part due to the fact that some don't understand their privileges while most aren't interested.

Summary and Conclusion:

As I stated earlier, the means to share massive amounts of personal information simply does not exist in our industry. More importantly, we and our fellow insurers collect far less information today than we did a few years ago, gather it in an improved manner, and have formulated policies to safeguard what we do collect.

Insurance companies have operated for centuries in a fiduciary capacity. While concern for the privacy of individuals is a comparatively recent phenomenon, it has been handled by the general insurance companies as another of

the many areas in which they must protect the interests of their customers, and their employees.

It is our belief the industry is thoroughly aware of the issue of privacy - and has responded very aggressively and positively. Even in situations where alleged deficiencies or abuses existed, and these were very minimal, the industry responded quickly and positively to remove any such real or alleged shortcomings. Symposiums of this nature are helpful since they serve as reminders and also may surface areas which could benefit from additional attention, however we do not believe any additional regulations or legislation are necessary.

It has been a pleasure being part of this conference. Thank you for inviting me.

DR. WILLIAM R. GHENT *
Chairman, Council on Health Care
The Canadian Medical Association, Ottawa

I must state at the outset that I am not the official spokesman for the Canadian Medical Association on this subject. I am the Chairman of the Council on Health Care for the Canadian Medical Association and as such, we are in the process of formulating some guidelines on this present topic.

It has been considered by the medical profession in the past, that our Code of Ethics covered this subject adequately for the protection of the individual patient's rights of privacy and confidentiality.

The medical Code of Ethics that has guided us for hundreds of years, was first formalized by Hippocrates, who wrote, "All that may come to my knowledge in the exercise of my profession or outside my profession or in daily commerce with men, which ought not to be spread abroad, I will keep secret and will never reveal". Succinctly reproduced as Article IV in the C.M.A. Code of Ethics, this principle is stated "Protect the patient's secrets".

Legally the principle of patient confidentiality has been documented in Regulation 448, Section 22, of the Health Disciplines Act of Ontario, "giving information concerning the patient's condition, or any professional services performed for a patient to any person other than the patient without the consent of the patient unless required to do so by law"; is considered to be an act of misconduct by the medical profession. I would like to emphasize the last statement as of importance, "unless required to do so by law"; and return to this later.

The consent procedural guidelines are waived by the medical profession in the case of Life Insurance Companies and Proof of Death certificates, necessary to provide the insurer the grounds for payment of death benefits to the family of the insuree. This is understandable and acceptable, both socially and medically. As a conclusion to the "need to know" group, it is a *sin e qua non* that the patient is the first to know and the immediate family are of next importance in cases where the patient is unable to transmit personal information.

We now enter a grey zone of legal requirements of the "need to know", "would know" variety or "unless required to do so by law". I will state categorically at the outset that governmental agencies are the most blatant and most pernicious purveyors of the erosion of privacy in the health care field.

There are many examples of this slow invasion of privacy by bureaucrats. This first began with the compulsory notification of communicable diseases, without the patient's permission, and with the advertisement of the disease placarded on the front door of the patient so inflicted. I can still remember the "Measles" sign that decorated our front door when I was a kid. This practice has been abandoned by medical advances but not due to public clamour, unfortunately.

The same communicable disease Statutes still apply to the "social diseases" of our society, and the notification on occasion can have tragic results. However, more and more of the medical profession disregard this law as inappropriate, if not stupid, circa 1984.

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another example of government "would know" by Statute concerns patients whom a doctor considers medically unfit to drive. The doctor is required, under penalty of law, to notify the Motor Vehicles Branch of this patient, with his diagnosis, and without his consent.

The loss of privacy by governmental decree is most worrisome as Ontario Hospital Insurance Plan and its computers obtain, without permission, the diagnosis and treatment afforded each resident of Ontario who seeks medical aid under the plan. This is an OHIP card, the billing mechanism employed by doctors, on behalf of their patients, to receive payment for their services. It contains name, OHIP number, address, date of birth, sex, diagnosis, treatment and date services rendered. This is signed by the doctor. The average patient has no idea of the personal data that has been transmitted to a government agency, and, certainly, the patient has not personally, actively authorized this release of information. This is made legal by the following quote from the Health Insurance Act: Section 33-2:

Every insured person shall have been deemed to have authorized his physician or practitioner who performed insured services to provide the General Manager with such information respecting insured services performed as the General Manager required for the purposes of the plan.

suppose the legal jargon, a "Notwithstanding Section 448, Subsection of the Health Disciplines Act" could be added.

is interesting to follow one of these information packages from a medical office to its ultimate destination in the great white computer in Kingston.

least five secretarial staff have access to these cards before they

reach the computer. Once computerized, the information is stored for sixty days in the computer, and then it is microfilmed for ongoing storage.

I am assured by OHIP that their files and systems are secure except for a court order release. However, the integrity of the storage system must be questioned in view of the recent computer break-ins by educated High School students. This is, of course, the theme of this conference, and as a member of the medical community, I would like to wish you all success. As far as we are concerned, the interest is long overdue.

The public, by and large, are unaware of the governmental health file that is being compiled about them, and I would think this represents the greatest hazard to public privacy that has ever existed in recorded time. We can be assured by the Ministry of Health that all is well and all is secure, but in all honesty, it must be questioned.

The "would knows" of this world are still with us medically, such as the neighbour who contacts the surgeon to find out what was done to his or her "closest friend". Then of course, the ridiculous state of affairs that arise when there are 13 kids and none of them talk to each other or to their parents. The permutations and combinations of queries about who did what to dear Mother and when, are limitless and irrevocably unanswerable except by next of kin.

There could be a more sinister and sophisticated "would know" group on the horizon - a group of experts who, for a price, will steal from personal health files of OHIP for pre-employment information, blackmail, etc.

The Federal Government has never been noted for its sensitivity to privacy or confidentiality - except for its own ends. The latest example of potential invasion of privacy by search and seizure is contained in Bill C9 - our Security Force Act. At least four clauses in this Bill allow for search of any

premises for any information, including medical upon suspicion of security breach.

Of more immediate concern to the medical profession, is the invasion of patient's privacy to be allowed with Bill C123. This Bill is to establish an investigative protocol for aircraft accidents. One clause would provide an investigator, not a medical person, the legal leave to examine a doctor's medical files of any person who may have had contact with a pilot involved in an air crash.

In conclusion, the medical profession has kept faith with the public; the private insurance carriers have kept faith with the public. The offender, by and large, is the bureaucracy of government - provincial and federal. Formally, I would warn each and every resident of Ontario and of Canada that the confidentiality of your health status is in jeopardy.

ROSS MCFARLANE, Q.C. *

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(representing the Canadian Manufacturer's Association)

Introduction

Hugh Rowan pointed out in his paper "Privacy and the Law",¹ that one of the difficulties besetting any discussion of privacy is the meaning or definition of the word "privacy" itself. Privacy is an intensely personal or subjective value - what one person would regard as intolerable, another would dismiss as a minor irritant.

A 1979 Harris poll conducted in the U.S. revealed the following major findings, concerning employee privacy issues:

- Twenty-five percent of the public believed employers asked for too much personal information;
- Almost a third of the public believed business did not do enough to keep employee information confidential;
- Seventy percent of employees believed laws should be passed giving employees a right of access to their personnel files;
- Ninety-three percent of employees believed employers should adopt specific policies to safeguard the information in employee personnel and medical files;
- Ninety-one percent of employees believed employers should be required to inform employees of any information indicating that the health of employees is being affected by conditions at work.

Several Canadian provinces have enacted legislation protecting individual priva-

cy and creating a tort of invasion of privacy - without proof of actual damage. Initially hailed as a significant legal development, the passage of these privacy acts has really been a non-development according to Professor Peter Burns of the U.B.C. Law School in his article entitled the "Law and Privacy: the Canadian Experience".²

The high cost of litigation and the embarrassment of having the invasion made public has deterred individuals from using the legislation. Therefore the Acts have not provided real protection to privacy interests.

R. Dale Gibson, Professor of Law at the University of Manitoba in his article "Legal Protections of Privacy" suggests that "the main explanation for the limited impact of privacy statutes is probably that there are not many forms of privacy invasion which are not already well protected by existing legal or social sanctions."³

I've mentioned some of the privacy concerns of employees. What are some of the privacy problems of business?

1. Access to Employee Medical Records

Surprisingly, a concern for corporations is the inability of management to get access to employee medical records held by its own company physicians. Companies, through their medical departments, acquire a great deal of medical information about an employee during the course of his or her employment.

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It is common for employees to put forward their medical condition as an important factor in disputes with their employer. Normally in a civil action, the opposite party can obtain copies of relevant hospital and medical records pursuant to the rules of practice of the court. This is done to avoid surprises at trial and minimize wasting the court's time. Ontario courts have gone as far as to say that non-disclosure of relevant medical records to the opposite party would be scandalous.⁴

Similarly, in employee-employer disputes, management would like to receive relevant medical information that has been obtained by the company's physicians, in order to determine whether the employee's claim is legitimate. The current medical-legal climate, however, seems to promote non-disclosure. The result can be trial by ambush for corporations.

How does this happen? Let's assume an employee-employer dispute occurs in a corporation. It can happen in a variety of ways, for example:

1. An employee is fired for refusing to perform his employment duties. The employee says he is sick or injured and can't carry out the work; or
2. An employee claims that he is eligible for certain disability benefits which are dependent on his medical record; or
3. An employee applies for a transfer to a different job in the company which is refused because the company doctor says the employee is unable to do the work.

So the employer approaches its company physician requesting access to the employee's medical files. Surprisingly, the company physician bluntly refuses to disclose the information.

The Physician's refusal is based upon the Ontario Health Disciplines Act; which defines "Professional misconduct" to mean:

"giving information concerning a patient's condition or any professional services performed for a patient to any person other than the patient with-out the consent of the patient, unless required to do so by law."⁵

Obviously, the employer is placed at a serious disadvantage in resolving this type of conflict, if the employee refuses to permit the doctor to disclose the medical information. Further, if proceedings result, the employer will not see the medical records until the day of the hearing.

The employee's representatives have all of the necessary medical information relating to the employee's claim including reports, and records prepared by the company's doctors. This is manifestly unfair to the employer, who is compelled to wait until the day of the hearing and is therefore unable to adequately prepare its case.

On the other hand, if the employer had been shown the medical information when the complaint first arose, the employer aware of the specific evidence of an employee's serious medical condition would presumably resolve the dispute quickly, sparing both parties the time and expense of a needless hearing.

There is obviously an area of conflict between the duty which a company physician owes to his employer and his statutory duty to persons consulting him in a professional capacity.

The Krever Commission Report into the Confidentiality of Health Information focused on this problem.

It recommended that legislation be enacted "to make it clear that a professional employee's duty of confidentiality transcends his or her duty to obey an employer's instructions, where those instructions require the employee to reveal information held in confidence."⁶

The 1980 Ontario Court decision involving Dr. Morton Shulman reinforces the point that it is a physician's duty not to disclose patient information even if such disclosure would serve a high social purpose.

We can all foresee situations where the need for privacy should yield to a public interest need for disclosure. One such situation arises where the company physician is of the opinion that an employee would jeopardize his own health or safety, or that of his co-workers, if he continued to perform his assigned tasks.

An example is an employee engaged in the assembly of automobiles, who is subject to dizzy spells. Section 15 of the Ontario Occupational Health and Safety Act places a statutory duty on employers to "take every precaution reasonable in the circumstances for the protection of a worker".

Another example arises where a company doctor becomes aware that the blood lead levels of certain employees exceed permissible levels, suggesting that these employees may be exposed to high concentrations of lead. The doctor is entitled to indicate to plant management that there are excessive lead levels in the plant, but is precluded from disclosing which particular employees are affected. Management is therefore unable to take effective action to remedy a potential hazardous situation in the plant.

If employers are to properly discharge their obligations under the Occupational Health & Safety Act to protect workers in the workplace, they must have specific information concerning health or safety risks, including the medical information about the employees involved.

It is clear that amending the Health Disciplines Act to permit some disclosure of medical information is necessary and desirable in these cases.

2. Surveillance

Should companies faced with the inability to obtain medical evidence prior to

a hearing, engage in employee surveillance to produce the necessary information? This is particularly so in workmen's compensation cases where the employer knows, or strongly suspects, the employee is a malingerer but cannot otherwise produce the evidence.

The introduction of photographs or video tapes of the employee's activities into evidence may prevent an unqualified claimant from receiving benefits. The admissibility of such evidence is a matter for the presiding judge or tribunal.

Covert surveillance activities obviously impacts upon an employee's privacy. However provided there is no trespass or intimidation involved, such activities do not appear to be prohibited by the criminal law.

As mentioned, several Canadian Provinces have passed privacy legislation creating a tort for the unreasonable violation of a person's privacy. The Saskatchewan and Newfoundland Acts specifically state that auditory or visual surveillance of a person by any means whether or not accompanied by trespass, is prima facie a violation of privacy.

While no one would disagree with the intent of this legislation to protect people from unreasonable violations of their privacy, it can tie the hands of a company who has an employee who is abusing the system and unfairly collecting workmen's compensation benefits.

3. Personnel Files - Collection, Storage and Distribution of Employee Information

Employers collect personally identifiable employee information for a variety of business reasons, such as the proper administration of labour agreements, benefit programs and other business functions or to comply with various federal and provincial laws and regulations. Personally identifiable information includes any information about an employee that can be isolated, such as a name, employee serial number or social insurance number.

There is no question that there has been increased emphasis within corporations

on the fair treatment of employee's records, their confidentiality, accuracy and relevance.

We have found fair information practices and concern for protecting personal employee information to be consistent with good business practices.

In my experience major corporations have procedures, or "Codes of Conduct" which would include most of the following guidelines, for the protection of employees information:

1. Collection and Use of Data

Only such information as is relevant and necessary to the employment relationship should be collected. No records should be gathered or maintained concerning an employee's political activities, memberships, publications or communications of non-employment activities without the written authorization of the employee.

Access to personal employee information should be limited to those persons in the company having a legitimate need for such information in the performance of their job responsibilities. Employees using such information should be instructed as to the importance of maintaining the confidentiality of personal employee information.

All notes, memoranda and letters generated by management and contained in personnel files should be written in a straight forward, objective manner.

2. Disclosure of Information Outside the Company

Personal employee information should not be disclosed outside the company without the employee's written consent, unless required to be disclosed by law or by court order.

The need to regulate disclosure to third parties is becoming more apparent as corporations are increasingly seen to be information sources for parties engaged in, or contemplating litigation. Inquiries include the following;

- (a) summary of an employee's work record;
- (b) previous periods of absence;
- (c) availability of overtime hours;
- (d) physical requirements for a specified job;
- (e) location of an individual;
- (f) personal medical information;
- (g) rates of pay and expected increases in pay.

This information should not be disclosed without the consent of the employee concerned.

In a typical situation, information concerning an employee's income is requested by his or her spouse in family court support proceedings. Following company policy, the request is denied and the spouse then proceeds to subpoena the records. The result can be that companies may find their personnel administrators spending almost as much time in court as at the office. Where medical information is requested, the personnel administrator will not have the medical record, with the result that a company can end up with two employees in court, the personnel administrator and the company doctor.

Legislation allowing employers reasonable compensation for their time and expense associated with these information requests would reduce these costs and help eliminate unnecessary requests.

(3) Employee Access to Personnel Files

There is increasing pressure on companies to give employees access to their personnel files. This is seen to be a corollary right to the right of privacy in the files. The federal Privacy Act includes provisions for access to personal information held by a federal government institution about individuals. Recently, a Private Members Bill was introduced in the Ontario legislature amending the Employment Standards Act to give employees in Ontario the right of access to employer's personnel records relating to the employee.

I believe, most businessmen support the principle that employees should have access to their personnel records. It is my experience that employees rarely exercise this right, since most companies now disclose to their employees the employee's performance evaluation rating, during the appraisal process.

4. Privacy of Confidential Technical Information of Suppliers

The transfer of technical information between an owner and a user of the information is common in the high-tech, specialized business environment of the 1980's. Large, diversified multi-national corporations rely on technology developed by outside firms specializing in intellectual property. This property may take the form of computer software, blue prints and drawings, video tapes, audio cassettes, and so on. A privacy concern arises out of the supplier's desire to protect from public disclosure what may be his only major asset - the technical information.

In order to protect its interests in the property, the supplier of the information looks to patent, trade mark, copyright and industrial design laws. Most view such laws as ineffective or inadequate in protecting its valuable information.

Accordingly, suppliers are increasingly seeking to obtain contractual protection for their confidential information through non-disclosure agreements. These agreements permit the supplier to impose upon the recipient far reaching obligations. Recipient companies should be cautious when signing non-disclosure agreements.

The agreements should be for a limited period of time, should only cover written communications and should define the standard of care to be provided by the recipient company. For example the recipient company could agree to give the information the same protection as it does to its own confidential information.

A new twist to the protection of supplier trade secrets and confidential

information involves the developing Canadian Workplace Hazardous Materials Information System. Industry, labour and government have worked to develop a system which would permit suppliers of hazardous materials to disclose information about these products to the users, while still protecting the supplier's trade secrets in this information. The information is required by the users to educate their employees on the safe use of hazardous materials in the workplace.

Implementation of this system will balance the conflicting needs of providing the information so that the user can educate his employees, against the supplier's vital interest in protecting its trade secrets.

5. Confidentiality of Business Information

Just as individuals are concerned about the confidentiality of their personal records, companies take great care to protect their confidential business information from disclosure to their competitors and to the public.

As many of you are aware, on July 1, 1983 the Federal Access to Information Act came into force. The laudable objectives of promoting open and accountable government have come under close scrutiny by the private sector whose confidential records, in the hands of government agencies, become subject to public disclosure.

Several provincial governments have passed, or, like Ontario, are considering the passage of similar legislation governing public access to provincial government records.

The past ten months' experience under the AIA indicates that companies have or should become more cautious in their dealings with the federal government out of fear that confidential information will be subject to public disclosure. Relations with government which were once less formal have become formalized; both parties require information requests be put in writing; replies are scrutinized and documents painstakingly stamped "confidential". The exchange of

information between business and government now follows rigid guidelines. The recent Federal Court of Canada Maislin Transport decision suggests that the private sector's concerns are not ill-founded. It is difficult to fully appreciate the significance of this case, because we don't know what the specific financial information Maislin argued was confidential and therefore should not be disclosed.

However it is clear from the decision that "it is not enough for Maislin to treat the information confidentially, but it must in fact be confidential by some objective standard."

The objective standard the court appears to be applying is the U.S. National Parks vs Morten test which held that in order for the information not to be disclosed it must "cause substantial harm to the competitive position of the person from whom the information was obtained."

A U.S. critic stated that the substantial competitive injury test places an almost impossible burden of proof on the submitter. Also gathering the evidence required to keep documents from exposure is so costly only the largest corporations make the effort.

It is hoped that if Ontario introduces freedom of information legislation that it does not impose standards of disclosure that are so onerous as to dissuade companies from freely communicating with their government, out of fear of disclosure of their sensitive information.

Conclusion

The presence of sophisticated electronic equipment used in business today permits information to be collected, collated and distributed quickly and to various recipients. Such capabilities are required to be competitive in today's global economy. What is needed is a balancing of the interests of all parties involved - a delicate balance which will protect the rights of all parties, yet permit the use of society's most valuable resource - information. That is the challenge for government and business today.

FOOTNOTES

1. Hugh Rowan, Q.C., "Privacy and the Law", Law Society of Upper Canada Special Lectures, 1973, pp. 259-307.
2. Peter Burns, "The Law and Privacy: The Canadian Experience", (1976), 54 Canadian Bar Review 1.
3. R. Dale Gibson, "Legal Protections of Privacy", The Practice of Freedom, Canadian Essays on Human Rights and Fundamental Freedoms, 1979.
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5. Health Disciplines Regulations, R.R.O. 1980, Reg. 448, Section 27(22).
6. Report of the Commission of Inquiry into the Confidentiality of Health Information, Volume III, pp. 167-168.
7. Re Shulman and College of Physicians & Surgeons of Ontario (1980), 29 OR (2d) 40 (Ontario Division Court).
8. Bill 20 - An Act to amend the Employment Standards Act (Reid, Rainy River).
9. Jack I. Pulley, Senior Environment Attorney Dow Corning Corporation, "The Freedom of Information Act - A Government Subsidy of Industrial Espionage". p.11

PANEL 2: PUBLIC SECTOR PANEL: "ACCESS TO INFORMATION:
HOW DOES THIS RELATE TO PRIVACY"

CHAIRMAN: Professor Don Rowat *

PANELISTS: John D. McCamus
Professor T. Murray Rankin
Professor David Flaherty
(

COMMENTATOR: Ken Rubin **

Professor Rowat is in the Political Science Department at Carleton University. He is an internationally known expert on both freedom of information laws and on the role and function of the Ombudsman in different jurisdictions. He is the author and editor of many books on these subjects, including Administrative Secrecy in Developed Countries (Macmillan, London, 1979).

** Mr. Rubin has been involved as a consumer advocate and public interest researcher for over a decade and a half on the local and national scene. He has done extensive research and writing on freedom of information and privacy in Canada. His works include: How Private is Private?, Prying Eyes, The Public's Right to Information Access in the Federal Government and Opening the Door a Crack. Mr. Rubin has been active in food policy issues, in civil libertarian issues, in local community concerns and as an advocate of citizen participation.

THE DELICATE BALANCE: RECONCILING PRIVACY PROTECTION
WITH THE FREEDOM OF INFORMATION PRINCIPLE

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A. Introduction

The freedom of information principle holds that, generally speaking, every citizen should have the right to obtain access to government records. The underlying rationales most frequently offered in support of the principle are, first, that the right of access will heighten the accountability of government and its agencies to the electorate; second, that it will enable interested citizens to contribute more effectively to debate on important questions of public policy; and third, that it will conduce to fairness in administrative decision-making processes affecting individuals.¹

The protection of privacy principle, on the other hand, holds in part at least that individuals should, generally speaking, have some control over the use made by others, especially government agencies, of information concerning themselves. Thus, one of the cardinal principles of privacy protection is that personal information acquired for one purpose should not be used for another purpose without the consent of the individual to whom the information pertains. Absolute adherence to this principle is thought to be unworkable in practical terms and the principle is therefore typically hedged in by various exceptions in privacy protection legislation. Nonetheless, the principle represents the statement of an ideal from which the exceptions are taken. The philosophy underlying the privacy protection concern links personal autonomy to the control of data concerning oneself and suggests

that the modern acceleration of personal data collection, especially by government agencies, carries with it a potential threat to a valued and fundamental aspect of our traditional freedoms.²

When one focusses attention on government records containing personal information concerning identifiable individuals, it is manifest that these two philosophies and legislation based upon them are capable of generating conflict. At the risk of belabouring the obvious, a few illustrations of the problem may be listed:

1. A journalist seeks access to government records that will reveal the salaries of the chief executive officers of all Crown corporations.
2. A researcher doing a study of military justice seeks access to records of decisions in disciplinary matters.
3. A journalist who believes that a particular agency has been lax in dealing with a particular problem, seeks access to records which reveal the actions taken by responsible officials.
4. A convicted offender, released from prison under supervision, commits an offence of violence. A journalist seeks access to letters written in support of the prisoner's release.

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5. A journalist seeks access to government records which he believes will reveal that a public servant has engaged in improper financial dealings with public funds.

One could easily multiply examples of this kind. In each case, the individual seeking access wishes to scrutinise some aspect of the conduct of public business. In some cases, this will involve disclosure of information pertaining to public officials. In others, it will involve disclosure of information concerning ordinary citizens. In each instance, the subject of the information can plausibly raise a privacy protection concern. One man's freedom of information is another man's invasion of privacy.

The conflicts thrown up by these tensions between the freedom of information and privacy protection principles give rise to essentially three policy problems for those who are engaged in designing legislated freedom of information and privacy protection schemes. First, there arises the problem of institutional design. In what institutional forum should conflicts of this kind be resolved? In the courts? In the legislature? In the bureaucracy? Second, wherever these problems are to be addressed, what guidance can be given to those saddled with the resolution of such conflicts? This is the question of substantive policy. How, if at all, can these two conflicting values be reconciled? In this paper, I will attempt to address these two questions and will do so against the background of a comparative analysis of Canadian and American freedom of information and privacy protection statutes and the proposals of the Ontario Commission on Freedom of Information and Individual Privacy, set forth in the Commission's 1980 Report, Public Government for Private People.

A third range of problems, essentially technical in nature, will not be addressed here. These problems arise from the potential for conflict between the general rights of access conferred by freedom of information laws and the more particular rights of access conferred by privacy protection laws

which enable individuals to obtain access to information concerning themselves. It is no easy task to design access rights within these two different contexts which will co-exist harmoniously, and this has proven to be a continuing problem³ in the American federal experience.

Suffice it to say that in the Canadian context, these problems appear to have been for the most part resolved in the drafting of the federal Access to Information Act and the Privacy Act, as enacted in June of 1982.⁴

B. The Institutional Design Problem: The Locus of Conflict Resolution

Since conflict between the competing values of access to information and personal privacy appears inevitable, what is the ideal institutional location for the power to provide an authoritative resolution of these conflicts? The answer provided by the American federal legislation is, as with so many other points of difficulty in the American freedom of information and privacy protection schemes, that the ultimate recourse is to be taken to the courts through judicial review of agency decisions to deny access.⁵ The U.S. Freedom of Information Act⁵ requires that federal government agencies make their records available to "any person" unless the records fall within one of nine exceptions to this general rule. The exception of relevance to the present discussion is that agencies may refuse to disclose "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy"⁶. An individual who is denied access to a government record on the basis of the agency's conclusion that disclosure would be an unwarranted invasion of privacy, may challenge the agency's decision in the federal courts. The court will, in turn, reach its own conclusion as to whether or not the record is exempt from disclosure and, if satisfied that the public interest in access outweighs the individual data subject's interest in privacy, will order disclosure of the doctrine in question.

The U.S. Privacy Act⁷ is drafted so as to function consistently with the access

scheme. Thus, although the Act generally prohibits disclosure of personal data without the consent of the data subject, there are some exceptions to this general rule and one of them permits disclosure under the Freedom of Information Act. Thus, the Freedom of Information Act confers a right of access upon the requestor, the content of which is subject of judicial determination, and the Privacy Act confers a right of non-disclosure on the data subject, the content of which can again be tested in the courts. To be sure, for the litigation-averse public servant, a premium is placed on sound judgment. When confronted with a request for access to a record containing personal information, the agency confronts the twin possibilities that if it denies access it may be sued under the Freedom of Information Act whereas if it grants access, it may be sued under the Privacy Act. Nonetheless, the American scheme does provide an independent source of authoritative advice on the resolution of the tension between access and privacy values. It is not at all surprising that a sophisticated jurisprudence on this question is emerging in the American case law.

Under the Canadian federal legislation, by way of contrast, reconciliation of the access and privacy values is left essentially to the discretion of public officials. Thus, although the Access to Information Act⁹ confers a broad right of access to government records - a right which is for the most part subject to enforcement by the courts¹⁰ - it exempts from this right access records containing "personal information", this latter concept being very broadly¹¹ defined indeed in the statute. This definition is itself subject to certain limited exceptions with the result that a very narrowly-conceived right of access to records containing personal information is contained in the Access to Information Act. As a general rule, however, access to such¹² records is prohibited by the statute, although this prohibition is, in turn, made subject to whatever disclosures are permitted under Section 8 of the Privacy Act. The latter provision is the section of the Privacy Act which purports to control

disclosure of personal information. Although it begins by stipulating that personal information shall not be disclosed without the consent of the individual data subject, it goes on to confer a series of discretionary powers on agencies to disclose information to a variety of individuals for a variety of purposes and concludes, in sub-section (m), that an agency has a discretion to disclose:

...for any purpose where, in the opinion of the head of the institution,

- (i) the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure, or
- (ii) disclosure would clearly benefit the individual to whom the information relates

The language of sub-paragraph (i) evinces a strong bias in favour of privacy protection, in contrast to the American provision which evinces strong support for the access principle, but this is a point to which we shall return in the next section of this paper. The important point for present purposes is that, as far as personal information is concerned, essentially no right of access is conferred upon individuals seeking access and no right to control disclosure is conferred upon those who wish to prevent it. In sharp contrast to the American scheme, then, the Canadian statute confides this entire question to the discretion of agency officials.

In short, the Canadian scheme addresses the problem of resolving the conflict between access and privacy by simply suppressing it into the level of administrative discretion and withholding rights of access and rights to prevent improper disclosure.

In adopting this approach, the Canadian scheme has, in my view, both substantially undermined the access rights conferred by the Access to Information Act and significantly depreciated the degree to privacy protection afforded by the Privacy Act. As far as the access right

s concerned, it should be emphasised that a very substantial percentage of government records must contain information pertaining to identifiable individuals which would bring them within the sweep of the far-reaching definition of personal information contained in these statutes. To confer so broad discretion on the federal bureaucracy to withhold or disclose such information is to simply ignore the basic premise of freedom of information legislation, i.e. the conferral of a right of access on the public at large. Public officials are placed in a position of conflict of interest when asked to disclose information which might facilitate effective public scrutiny of their performance. The enactment of a freedom of information statute represents an acknowledgement of this plain fact and the adoption of a remedy which places the decision to disclose the document effectively beyond the powers of the officials concerned. If it is the point of the federal Canadian scheme to sacrifice freedom of information in order to effect a high level of privacy protection, then it must be said that the federal bureaucracy is also not the most suitable instrument for the achievement of this objective. In any event, public officials when charged with the responsibility for weighing privacy values in the context of an access request, are placed in a conflict of interest position. It may well be in the interests of a particular department to disclose information and demonstrate that it has conducted public affairs in a perfectly sound and responsible fashion, notwithstanding the substantial invasion of the privacy of identifiable individuals which may result from disclosure.

A leading American decision under the Freedom of Information Act illustrates the problem. In Sonderegger v. United States Department of the Interior,¹³ certain journalists sought access to claims files arising in the context of special federal assistance programmes for the victims of a flood which had devastated a town in Idaho. The journalists obviously wished to detect malfeasance in the handling of such claims and the federal agency involved was quite willing to permit full disclosure.

The flood victims, on the other hand, felt that disclosure would substantially invade their privacy, inasmuch as each claim represented essentially the net worth of the individual in question. As well, they felt that disclosure would prove to be very stressful for a community which was already enduring considerable stress in attempting to re-establish itself after this disaster. Expert evidence was provided by a psychologist who was working with the local committee, confirming this prognostication. The federal court decided that the public interest in disclosure was significantly outweighed and, thus, overruled the decision of the agency to permit disclosure. One can understand that public officials are anxious to dispel unfair allegations of wrongdoing. My point simply is that there will be situations in which the question of disclosure cannot be approached in a completely disinterested fashion.

A substantial problem with the Canadian scheme, then, is that it establishes a far-reaching domain of discretionary power which, at one and the same time, creates the risk that access to records will be denied in order to preclude appropriate scrutiny of public affairs on the pretext that disclosure will unfairly invade the privacy of data subjects and, on the other hand, the risk that public officials concerned to clear their good names will be tempted to do so, notwithstanding the fact that disclosure will effect a substantial invasion of the personal privacy of individuals.

A further problem with the Canadian scheme is that it conduces to a wilderness of inconsistent decision-making from one department and governmental unit to the next. One finds little or no guidance in the statute itself as to how the discretion to disclose should be exercised. More surprisingly, perhaps, neither does one find assistance in the Treasury Board's Interim Policy Guide which sets forth extensive guidance for public officials on the proper interpretation and implementation of other aspects of the Access to Information Act and the Privacy Act.

A more sympathetic observer of the Canadian scheme might argue that the problem is, after all, an intractable one and suggest that the legislation in its current form will at least provide a splendid opportunity for the Information Commissioner and the Privacy Commissioner to investigate matters of this kind and assist the bureaucracy in developing helpful guidelines for resolving conflicts of this kind. It is difficult to discern, however, that either Commissioner will have a substantial role in dealing with this issue. As far as the Information Commissioner is concerned, if the information in question clearly falls within the definition of personal information, and surely this will often be so, there does not appear to be much for her to say, other than that the record in question is, indeed, exempt from the access scheme. As far as the Privacy Commissioner is concerned, provided that the public official in question has, in good faith, weighed the public interest in disclosure against the privacy value, it is again difficult to see that much remains to be said by the Commissioner. It may well be however, that given the importance of this question and the absence of any other source of guidance, either or both Commissioners will see fit to comment either on the inadequacies of the current legislative scheme or on the deficient exercise of the discretion which is unquestionable conferred upon public officials by it.

Two further explanations may be offered for the Canadian reluctance to extend judicial review into the area of personal records. First, it may be felt that this is an attempt to avoid burdening data subjects with either the cost or the inconvenience of participation in judicial review. Second, it may be thought that so important a question as this ought not to be simply remitted to the courts.

With respect to the first point, a preferable solution would have been to endow the Privacy Commissioner with the power to bear the cost of litigation of this kind on behalf of the data subject. One of the great innovations of the Access to Information and Privacy

Acts was to confer a power of this kind on both the Information Commissioner and the Privacy Commissioner in the context of access requests. Where either Commissioner believes that the information should be made available over the objection of the governmental institution in question, the Commissioner is entitled to carry litigation brought on behalf of the requester and thus provide an authoritative resolution of the dispute¹⁴ which is cost free to the requester. The Privacy Commissioner could have been similarly empowered to provide cost-free litigious protection to the data subject.

With respect to the appropriateness of the courts as the instrumentality for resolving these conflicts, it would appear that the only other alternative to the bureaucracy itself would be the legislature. Indeed, many statutes which establish administrative mechanisms requiring the collection of personal data do explicitly provide for the protection of the data and, while the notion of resort to the legislature has an obvious democratic appeal in this context, two reservations about the capacity of the legislature to deal effectively with these issues must be registered. First, a legislature dominated by a majority party is easily seen to be subject to a version of the same conflict of interest that plagues the executive branch. The Access to Information Act notwithstanding, a Canadian government is not likely to vigorously pursue a policy of drafting legislation so as to ensure effective scrutiny of its own conduct of public affairs. Secondly, it should be noted that many legislative provisions of this kind are currently to be found in the statute book and, consistently with the hypothesis just stated, they typically provide that there is to be no access whatsoever to the data in question. The concern that such provisions may conduce to too much secrecy is manifested in Section 24 of the Access to Information Act, which requires that all such provisions be reviewed by a Parliamentary Committee within three years of the enactment of the Access to Information Act. Accepting, as I do, that provisions of this kind relating to personal data were often enacted purely for privacy protection purposes, they

are typically drafted without any apparent sensitivity to the desirability of permitting some forms of access to even reasonably sensitive data. Thus, as Professor David Flaherty demonstrated in a paper prepared for the Ontario Commission, much useful medical research has been thwarted by the existence of provisions of this kind.¹⁵ Leaving these reservations aside, however, it nonetheless is true that one possible response to the concern that the courts should not be given too much discretion in matters of this kind would be to specifically enact access and disclosure schemes to deal with specific information contexts.

As a more general matter, however, there are a number of difficulties inherent in the current Canadian model of administrative discretion and in a general referral to the legislature. This, together with what appears to be reasonably positive American experience suggests that judicial review is the most attractive of the alternatives. Whether the reconciliation of privacy and access principles is to be located in the legislature or the courts or the bureaucracy, or perhaps all three, the difficult question that remains, and to which we now turn, is how one should approach the task of effecting that reconciliation in analytical terms.

C. The Substantive Problem:

Achieving an Appropriate Balance

Again, the American and Canadian models provide interesting points of contrast. As has been indicated, the American statute provides a right of access unless disclosure of personal data would constitute a "clearly unwarranted invasion of privacy". The Canadian statute, on the other hand, provides for essentially no right of access, but for the right to obtain documents containing information in three categories:

- 1) Certain basic information concerning the contracts of employment of public servants and their opinions or views given in the course of employment;

- 2) Similar information concerning individuals performing services

for a government institution under contract; and

- 3) Information "relating to any discretionary benefit of a financial nature, including the granting of a licence or permit".¹⁶

Presumably, the draftsmen of the Canadian statute thought that a more precise provision of this kind had some advantages over the vague standard of the American "clearly unwarranted invasion of privacy" test. Nonetheless, the difficulties created by a refusal to embrace a balancing test of some kind are manifest in this provision. As an access right, the Canadian provision leaves much to be desired. The illustrations with which I began this paper were carefully chosen with this point in mind. They are all situations in which, in my view, a strong claim for access can be made and they are all situations in which access would be granted under the American scheme, notwithstanding the fact that all involve disclosure of personal information.¹⁷ They are also all situations in which no access would be given as of right under the Canadian statute.

From the privacy protection point of view, the Canadian provision is also flawed. Although one understands the obvious rationale for requiring disclosure of information relating to discretionary benefits such as licences, it should be noted that most welfare schemes, perhaps all such schemes, contain modest discretionary features. Thus, whether we speak of unemployment insurance benefits or widows' benefits under veteran's assistance legislation, or the various forms of assistance rendered to those suffering from mental or physical disabilities, some financial benefits typically remain within a discretionary category. There appears to be no merit whatsoever in conferring, as the Canadian statute does, a right of access to personal data pertaining to discretionary benefits of this particular kind.

A strong case can be made, then, for the desirability of a balancing test of some kind. Indeed, this is accepted in the

Canadian statute to the extent that apart from the limited right of access to personal data conferred in the Access to Information Act, all other disclosures are to be made - though purely as a matter of administrative discretion - on the basis of a balancing test. The question that remains to be considered is how this balancing test should ideally be designed. Before offering some suggestions to this end, two preliminary points can usefully be addressed.

First it should be noted that to some extent the conflict between freedom of information and privacy protection can be resolved by deleting the names of identifiable individuals before releasing the requested documents. Anonymous data of this kind will often meet the needs of the requester and retard, if not completely eliminate, the risk of privacy invasion. As the leading U.S. case of U.S. Department of the Air Force v. Rose¹⁸ indicates, however, even where some risk of identification or privacy invasion remains, deletion of names may make the task of balancing the public interest in access against the risk of privacy invasion an easier one. In Rose, legal researchers engaged in a study of military discipline sought access to records relating to Air Force disciplinary proceedings. They conceded that access to records with names deleted would be sufficient for their purpose but it was objected by the defendant that even with names deleted, it would be possible in many instances for individuals who were familiar with the incidents in question to identify the person disciplined. The federal court held that although this risk was present, it was outweighed in the present case by the public interest in the ability of outsiders to scrutinise this area of government activity.

In any case where the deletion of names or other identifying detail has the effect of preventing the identification of individuals, the requester should be able to rely upon the principle of severability, i.e. the principle embraced by both the American and Canadian access statutes that the government must disclose any reasonably

severable portion of a requested document that is not covered by one of the exemptions.¹⁹ One of the lessons of the Rose case, however, is that even where the elimination of identifiability cannot be achieved in this way, one may nonetheless reduce the risk of privacy invasion to the point where it is outweighed by the public interest in access.

A second point which has surfaced in the American case law applying the "clearly unwarranted invasion of privacy" test is whether the specific use of the personal data proposed by the requester is to be relied upon as the basis for testing the public interest in disclosure. Thus, where the requester has some highly beneficial medical or other research in mind, is it the potential benefit of such research that should be weighed against the invasion of privacy or, inasmuch as disclosure is likely to mean that the personal data can have a wider circulation in the public domain, should the particular use of the requester be ignored? In the U.S. experience and literature, discussion of this issue has been provoked by the decision in Getman v. NLRB,²⁰ a case in which certain law professors specializing in labour relations were allowed access to lists of employees eligible to vote in union representation elections in order to carry out research on certain policies of the U.S. National Labour Relations Board relating to the certification process. The court in Getman awarded access to the requesters specifically for the purpose of this project, and on the faith of an undertaking by them that they would not disclose the names of the individuals to anyone else. It is not at all evident that the disclosure of these names to the public at large would be sustained. Indeed, given the apparent absence of any public benefit from such disclosure, this would likely be characterized as an unwarranted invasion of personal privacy - hence the Getman court's concern that the requesters make no further disclosure of the employee lists. In Getman, then, the Court was prepared to grant limited access to the particular requester, even though access to the public at large would be inappropriate.

The debate stimulated by Getman has been rather intense.²¹ Some have objected to the decision on the grounds that inasmuch as the Freedom of Information Act provides access to "any person", the particular requester's "need to know" ought to be considered irrelevant. Others have had a policy justification for this reading of the statute which, to my mind at least, is compelling. If one does embrace a "need to know" concept in some of this case law, it is likely to spread its influence throughout the case law dealing with the conflict between freedom of information and privacy protection and very substantially undermine the value of the access right. Moreover, it seems impractical to contemplate a general practice of trying to restrain further disclosures of information released to requesters under the Freedom of Information Act. A far better solution, it seems to me, and one that as in fact proposed in the report of the Ontario Commission, was to treat the problem of access for research purposes as a separate problem and to devise a mechanism for providing access to personal data for the research community.²²

Turning then to the central question, how is one to strike a balance between freedom of information and privacy protection, the question essentially is whether one can do any more by way of providing guidance to decision-makers than to offer the general instruction provided, albeit in significantly different terms, by both the American and Canadian statutes that the decision-maker should carefully weigh the public interest in disclosure against the personal interest in privacy protection. My own view is that one can substantially improve on this approach by attempting to articulate a variety of more explicit factors that should be taken into account by someone undertaking the task of reconciling these two interests. The following propositions derive, in the main, from discussion set forth in the Ontario Report²³ to the same general effect and from a reading of the American case law applying the "clearly unwarranted invasion of privacy" test.

I would suggest that the following factors should be considered pertinent in attempting to balance these conflicting interests:

- (a) Is access to the information necessary to enable an individual to accomplish any of the objectives underlying freedom of information legislation, i.e. effective scrutiny of the activity of government institutions, effective participation in discussion concerning public affairs and increased fairness in administrative decision-making affecting individuals.

As I have already indicated, it may be asking too much of human nature to allow public officials themselves to determine whether a particular request is well suited to accomplish these objectives. The issues raised by these criteria for access are not particularly subtle, however, and could be answered with some confidence by third parties in most instances.

- (b) Is access to the information in question likely to make a positive contribution to the promotion of public health or safety?

In addition to the generally accepted political rationales articulated in point (a), the granting of access to information with health and safety objectives in view appears to be accepted as a desirable spinoff of freedom of information legislation. Requests put forward to these reasons offer a particularly compelling interest in access.

- (c) Will access to the information in question promote an informed choice in the purchase of goods and services?

Again, this appears to be a desirable incidental spinoff of freedom of information schemes. It is of no little interest that items (b) and (c) both find some philosophical support in Section 20 of the Canadian Access to Information Act which explicitly provides for access to the results of product and

environmental testing and, more generally, confers upon government institutions a discretion to disclose commercial information if the public interest in public health, public safety or protection of the environment outweighs the harm that might result to the commercial party to whom the information pertains.

- (d) Will the granting of access have the effect of benefitting the individual who is the subject of the information disclosed?

There may well be situations where the individual seeking access has only in mind the conferral of some benefit on the data subject and the case for disclosure in such circumstances is obviously compelling. This consideration is explicitly set forth in Section 8(m) of the Privacy Act as a basis for exercising the discretion to disclose.

- (e) Is the information of a kind which is normally disclosed in other contexts?

The fourth illustration set forth at the beginning of this paper asked whether letters written in support of the release of a prisoner should be available to the public. These were the facts of a decision under the American Act, Philadelphia Newspapers, Inc. v. U.S. Department of Justice,²⁴ in which the court reasoned that inasmuch as such individuals are acting, in a sense, as character witnesses for the convicted person, something they would normally be required to do in a public hearing, their letters should be made available. Here, as elsewhere in legal analysis, fruitful analogy is an important source of guidance.

A number of factors may be taken to weigh in the balance against disclosure:

- (f) Will access to the information frustrate the objectives of the statutory scheme under which the information was originally collected?

There may well be situations, for example, where conciliation procedures are mandated by a statute, where a disclosure of records will render the governmental institution in question effectively unable to carry out its assigned statutory task. Surely this would weigh heavily against disclosure.

- (g) Is the personal information of an especially sensitive kind?

It is possible to identify types of information such as medical information or information relating to eligibility for social service or welfare benefits the disclosure of which would be seen by the average data subject as an especially grievous invasion of privacy.²⁵

- (h) Is the information unlikely to be accurate or reliable?

The probability that personal data will be accurate may vary quite considerably with the circumstances under which it is gathered or submitted, and the safeguards established or verification procedures adopted by the government institution in question. The likelihood of circulating inaccurate information should weigh against a decision to disclose.

- (i) Is there some prospect that the data subject will suffer substantial harm, pecuniary or otherwise, as a result of the disclosure?

Some invasions of privacy may serve not only to embarrass or otherwise diminish the sense of privacy of the individual data subject, but also cause substantial harm of one sort or another. This, again, should weigh against disclosure.

- (j) Was the information submitted on the basis of an expectation, tacit or otherwise, that it would be treated in a confidential fashion?

American courts have suggested that although an undertaking of confidentiality should weigh heavily against disclosure, it should merely be a factor taken into account in determining

whether or not to make the information available.²⁶ Presumably such undertakings would normally be adhered to but perhaps not, for example, where the individual who initially supplied the information did not rely on the undertaking in any meaningful sense or was in any event required by law to submit the information in question.

No doubt intimate experience with the functioning of freedom of information and privacy protection schemes would enable one to offer further propositions of this kind.

The Ontario Commission recommended²⁷ a rather elaborate statutory provision in which a number of the foregoing propositions were stated as presumptions to be employed in the application of the balancing test and, I confess, I remain convinced that this is an attractive solution to the problem presented in this paper. At the very least, however, it seems to me that the articulation of principles of this kind should be of assistance to those charged with the task of applying the more vague standards set forth in the American and Canadian legislation.

Privacy is an important but surely not an absolute value, and one which must compete with other values such as that so widely accepted today of the public interest in access to government information. There is a serious danger that the concern to protect privacy will be allowed to submerge the access value, as the virtually wholesale exclusion of personal information from the Canadian Access to Information Act amply demonstrates. It is not too much to suggest the undue deference to the privacy value has substantially undermined the value of the Canadian access scheme. In remitting the question of whether to disclose personal information to the realm of discretionary power, the draftsmen of the Canadian scheme shied away from the task of reconciling these conflicting values.

1. See, Ontario Commission on Freedom of Information and Individual Privacy, Final Report: Public Government of Private People (1980), (hereafter, "Ontario Report"), vol. 2, pp. 77-81; J.D. McCamus (ed.), Freedom of Information: Canadian Perspectives (1981: Butterworths, Toronto).
2. Ontario Report, vol. 3, pp. 495-515. See, generally, A.F. Westin, Privacy and Freedom (1967: Atheneum, New York); James B. Rule et al., The Politics of Privacy (1980: New York: New American Library).
3. See, Ontario Report, vol. 3. at pp. 789-798.
4. Canada, Parliament, First Session, 32nd Parliament, 1980, House of Commons, Bill C-43 (An Act to Enact the Access to Information Act and the Privacy Act, to amend the Federal Court Act and the Canada Evidence Act, and to amend certain other Acts in consequence thereof) as passed by the House of Commons, June 28, 1982, hereafter the "Access to Information Act" or the "Privacy Act".
5. 5 U.S.C. Section 552.
6. Id., (b) 6.
7. 5 U.S.C. Section 552a.
8. See, generally, James T. O'Reilly, Federal Information Disclosure (1983: McGraw-Hill, Colorado Springs) vol. 2, pp. 1-38, c. 16.
9. Access to Information Act, sec. 4(1).
10. Id., sec. 41.
11. Privacy Act, sec. 3.
12. Access to Information Act, sec. 19.
13. 424 F. Supp. 847 (1976).
14. Access to Information Act, sec. 42; Privacy Act, sec. 42.

15. D.H. Flaherty, Research and Statistical Uses of Ontario Government Personal Data, Ontario Commission on Freedom of Information and Individual Privacy Research Publication 5, (1979: Government of Ontario, Toronto).
16. Privacy Act, Section 3, (j) to (l) of the definition of "personal information".
17. Cases 2 and 4 are the most problematic. For authorities allowing access, respectively, see, U.S. Department of the Air Force v. Rose, 425 U.S. 352 (1976); Philadelphia Newspapers Inc. v. U.S. Department of Justice 405 F. 2d 670 (DC Cir 1971). In Rose, the requestor sought access to the files with names deleted but the granting of access still offered the prospect of some privacy invasion as readers familiar with the incidents in question would be able to link the files to named individuals.
18. 425 U.S. 352 (1976).
19. Access to Information Act, section 25.
20. 450 F. 2d 670 (DC Cir 1971) of. Masonic Homes v. NLRB 550 F. 2d 214 (3d Cir 1977), (employer denied access to union cards signed by its own employees).
21. See, generally, F.A. Rosenfield, The Freedom of Information Act's Privacy Exemption and the Privacy Act of 1974 (1976), 11 Harv. Civ. Rts. - Gov. Libs. L. Rev. 596 at 611-618; A.T. Kronman, The Privacy Exemption to the Freedom of Information Act (1980), 9 J. Legal Stud. 727 at 767-770.
22. Ontario Report, vol. 2, pp. 332-337.
23. Id. vol. 2, pp. 324-338.
24. 405 F. Supp. 8 (ED Pa 1975).
25. For an attempt at a more elaborate list of such information, see, Ontario Report, vol. 2, p. 338.
26. Robles v. EPA, 484 F. 2d 843 (4th Cir 1973); Washington Post Co. v. U.S. Dept. of Health and Human Services, 690 F. 2d 252 (CADC 1982).
27. Ontario Report, vol. 2, pp. 335-338.

ACCESS TO INFORMATION & BARRIERS FOR PRIVACY:

THE SEARCH FOR BALANCE

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A. Introduction

Historically, data protection laws and freedom of information laws trace their roots to different sources. They emerged at very different times in European history initially in response to different perceived problems. At present, however, these two separate legal claims have been blurred in many people's eyes. I will argue that this blurring is a consequence of the recent technological achievements which are creating our global "information society". The overlapping of these two legislative regimes may foreshadow the eventual creation of a comprehensive "information law" as our legal rules develop in order to catch up with the advances in computer/telecommunications technology.

Superficially, access to government documents may be viewed as a claim, or perhaps increasingly, as a right in liberal democratic societies; the ability to inspect one's personal files held in government can be seen as simply a subset of this general right of access. Alternatively, the ability to prohibit access by others to one's own information in government data banks is often regarded as the converse of "Freedom of Information".

Laws promoting access to government records originated over two hundred years ago in Sweden. They were passed in an

effort to enhance the accountability of the state to its citizens.

Data protection laws, on the other hand, are a comparatively recent reaction to widespread fears about the impact of information technology. As computers and telecommunications come to represent the central nervous system of an inter-dependent world, the manila file folder is being quickly replaced by the computer printout. The printout is being replaced by direct or remote access to government data banks. By Swedish law, for example, citizens are now permitted to use government computers for direct access to government data banks.

Since remote access to government banks is possible beyond one nation's borders, the issue of the transborder data flow of both personal and governmental information has prompted calls for the co-ordination of national laws - in both the data protection and access to information fields.

My central theme is that despite their differing histories, these two legislative fields both represent no more than different tools for individuals and groups of individuals in our society to assist power against the state and against powerful institutions in the state. By some estimates, practically one-half of Canada's gross national product and more than one half of the

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employment of our citizens is related to the production, processing, storage and use of information.¹

To some, the computer is merely a neutral machine; to others, it represents the "infrastructure of tyranny". To still others, like Mr. Yoneji Masuda of Japan's Institute for the Information Society, the near future is keenly anticipated to be a "computopia".²

Information "utilities" will permit everyone to obtain information, solve problems and create untold opportunities, merely by connecting one's home terminal to the government "utility".

Whichever prediction proves to be true, most data protection and access to information issues reflect long-standing societal conflicts over the distribution of power, between the state and the individual, the producer and the consumer, and so forth. The computer technology simply speaks a new "language of power".³

Sissela Bok summarizes this point in a compelling way: "Conflicts over secrecy - between state and citizen... or between parent and child, or in journalism or business or law - are conflicts over power - the power that comes through controlling the flow of information. To be able to hold back some information about oneself or to channel it and thus influence how one is seen by others gives power; so does the capacity to penetrate similar defences and strategies when used by others. True, power requires not only knowledge but the capacity to put knowledge to use; but without the knowledge, there is no chance to exercise power".⁴

B. Fading Borders

The call for data protection laws reflected a widespread concern over individual privacy. Privacy is an elusive concept. Several years ago, a federal task force on privacy and computers identified three different contexts in which the invasion of privacy may be asserted: (1) territorial privacy; (2) privacy of the physical person and⁵ (3) privacy in the information context.

Alan Weston defined this notion of "informational privacy as the claim of individuals, groups or institutions to determine for themselves when, how and to what extent information about them is to be communicated to others".⁶

Until quite recently, the major safeguard of information privacy had been the difficulty in finding particular information stored in a variety of ways in a variety of locations. Today's computers have the speed and capacity to store, combine, retrieve and transfer huge quantities of data very quickly and very cheaply.

Among the O.E.C.D. countries, 9 have explicit data protection laws at the national level (Austria, Canada, Denmark, France, Germany, Luxembourg, Norway, Sweden and the U.S.A.). The United Kingdom's data protection bill will be the tenth such law on the list. Some laws apply only to personal data registers which contain computerized files; some cover manually stored data as well.

Most laws cover personal registers in both the public and private sectors; however, some laws like Canada's Privacy Act, for instance, cover only public sector records. Most such laws protect only personal information pertaining to individuals; some data protection laws, however, such as those of Austria, Denmark, Luxembourg and Norway also pertain to "legal persons" such as companies, societies and foundations. The O.E.C.D. has generated guidelines to help coordinate and suggest maximum data protection standards so that varying national laws do not create non tariff barriers to the flow of data.

Freedom of information laws, on the other hand, now exist in some 10 O.E.C.D. countries, six of which also have data protection laws. Just as the control of one's personal information has generated data protection laws, likewise the accelerating demand for access laws has been part of a larger concern of individuals and groups for a greater degree of control and participation in the government decisions which affect our lives. The ability to participate in an agency's decision concerning the siting of a dam or a hazardous waste facility

or concerning a natural gas rate increase, requires full and timely disclosure of information from government files. Similarly, the ability to see one's complete worker's compensation file or to prohibit others from seeing one's psychiatric records, is essential if an individual is to be more than the passive object of bureaucratic whim. The first set of decisions would be the subject of a freedom of information law; the second, of a data protection regime.

Law reform in both areas fits squarely within a framework of law reform such as liberalized standing rules before courts and administrative agencies, cost awards for public interest intervenors and enhanced "shareholder democracy" within corporations. All of these reforms promote citizen participation.

However, a generalized right to government information clashes with at least four other interests, each of which I will examine in turn: (1) the privacy rights of other individuals; (2) the state's own interest in a core zone of secrecy; (3) the claims advanced by other governments to protect their information in another government's files and (4) the right of corporations to ensure the secrecy of information concerning them which is found in government files.

Firstly, all freedom of information laws contain a cluster of exemptions that seek to defend vital state interests such as national security, law enforcement and coherent policy formation from unauthorized disturbance. The precise scope of such exemptions may differ but the underlying principles do not vary.

Second, all freedom of information laws seek to protect the individual's privacy from all except the individual concerned. When someone requests information concerning another, for example, for epidemiological research, a delicate balancing of judgment is typically required. The U.S. FOIA exempts the disclosure of personal files, "the disclosure of which would constitute a clearly unwarranted invasion of person-

al privacy".⁷ The necessary overlap between data protection and access laws in this regard is perhaps best demonstrated in Australia. Although there is no privacy act at the federal level, an individual may seek access to his/her personal records under the new⁸ Australian freedom of information act.

Third, the information provided by one government to another is routinely protected under various freedom of information laws. For example, in both the Canadian Privacy Act and the Access Act, information "obtained in confidence" from foreign governments, international organizations or from the governments of a province, municipality or regional district cannot be revealed by a federal agency.⁹ Many departments of the Alberta, British Columbia and Ontario governments, for example, are seeking wholesale protection for their records which are shared with Ottawa. Some access laws like the U.S. FOIA permit access to U.S. nationals and foreigners alike; others like Canada's Access Act restrict use to Canadian citizens and landed immigrants despite the technological ease in retrieving information in public data banks from abroad. At the international level, new challenges to national sovereignty are posed by the new communication technology. For example, how far should one government or multi-national enterprise be permitted to go in collecting sensitive data on another country's natural resources or economic infrastructure? Is there a right of access or a principle of consent which also applies to nation states?

Finally, business enterprises have special concerns about freedom of information legislation. Businesses, too, are concerned that information which they provide to various government agencies be adequately safe-guarded. But can a corporation have "privacy"? Sissela Bok answers 'No':

"Claims of privacy are often made for (practices of large-scale collective secrecy such as trade secrecy) and the metaphors of personal space are stretched to apply to them. To be sure, such practices are automatically private in one sense, so long as they are not

public. But the use of the language of privacy with its metaphors of personal space, spheres, sanctions and boundaries to personalize collective enterprises should not go unchallenged. Such usage can be sentimentalized as the excessive resort by poets to the "pathetic fallacy" (in which personal feelings such as grief or cruelty are ascribed to nature) and can thus distort our understanding of the role of these enterprises".¹⁰

Therefore "privacy" claims advanced by corporations are really an assertion of property rights or assertions of power vis-a-vis the public or nosy competitors.

Although corporations are not given status under the Canadian Access Act, their principals or lawyers may seek information for themselves or as part of a campaign of what Americans have termed "industrial espionage". Just as with individual privacy, a delicate balancing judgment is required under an exemption in the Access Act in order to protect confidential business information from wrongful disclosure.¹¹ Business information which is otherwise confidential may be disclosed "if such disclosure would be in the public interest as it relates to public health, public safety, or protection of the environment and if such public interest in disclosure clearly outweighs in importance" the business interest asserted.

Interestingly, however, greater rights in this regard are provided to business interests than to individuals in the Canadian legislation. Under the Access Act, business enterprises are given the explicit right to be informed in writing of a possible disclosure of their information. They also have the right to contest such disclosure all the way to the courts in what the Americans call "Reverse FOI Suits".¹² However, the Federal Government may release sensitive personal information to a wide array of third parties without the individual's knowledge or consent - subject only to oversight by the privacy commissioner in certain instances.¹³

The ability of business enterprises to enjoin others from gaining access to their information found in public sector data banks is a substantial countervailing power for our corporate sector. Professor Christan Bay, however, would extend the principle of openness and accountability which freedom of information laws seek to foster in the public sector to the private sector as well. Prof. Bay advocates a right of access to the information held by all private companies operating in the public domain in light of the power these institutions exercise over our lives.¹⁴ His suggestion is consistent with the increasing development of participatory shareholder democracy in the United States.¹⁵

C. Conclusion

Both data protection and general access to information laws are examples of a trend in the Canadian legal culture toward the codification of procedural entitlements. The charter of rights and freedoms is another prominent example of how an increasingly heterogeneous society like ours has begun to require that certain procedural entitlements be made explicit. Entitlements which in most cases were implicit in the past have now become constitutional rights. This trend may reflect an increasing distrust of large institutions by ordinary citizens, perhaps fueled by a fear that personal privacy and similar values are being eroded by the computerized infrastructure of our complex society. As this information society develops, a comprehensive and international framework of "information law" must also develop, with all the balancing judgments discussed above likewise made explicit.

In my view, the emergence of these new kinds of procedural rights to information - personal, governmental and even corporate - should be understood as a contemporary application of what Justice Frankfurter said many years ago; "The history of (American) freedom is in no small measure the history of procedure".¹⁶

Thank you.

ENDNOTES

1. This figure is quoted from R. Grant Hammond, "Quantum Physics, Econometric Models and Property Rights to Information" (1981) 27 McGill L.J. 47 at 48.
2. Y. Masuda, The Information Society as Post-Industrial Society (Tokyo: Institute for the Information Society 1980) at 114, 146.
3. H. Burkert, "A Functional Explanation of Data Protection Laws" (1982) Computer L.J. 169.
4. S. Bok, Secrets (New York: Pantheon Books, 1982), p.19.
5. Canada, Department of Communications and Department of Justice, Privacy and Computers (Ottawa: Information Canada, 1971) at p. 13-14.
6. Alan F. Westin, Privacy and Freedom (New York - Athenum Press, 1967) at p.7.
7. USCA S.552 (B) (6).
8. S. 41 of the Australian Freedom of Information Act exempts documents the disclosure of which would involve "the unreasonable disclosure of personal information". However, Section 41(2) states that this does not affect an individual's request for access to one's own information. Section 45 also exempts the disclosure of information that "would constitute a breach of confidence", which has also been interpreted to safeguard personal privacy. Recently, the Australian Law Reform Commission recommended the passage of a Privacy Act to clarify the scope of informational privacy and to extend the right of access to the private sector, starting with the Australian Commonwealth Territory.
9. S. 19 Privacy Act; S.13 Access to Information Act.
10. S. Bok, op. cit, supra note 4, at p. 13-14.
11. See S. 20 (6) Access to Information Act.
12. The first case decided under the Access to Information Act raised just this kind of issue: Maislin Industries Ltd. v. Minister of Industry, Trade and Commerce et al (Federal Court, Trial Division per Jerome, A.C.J. May 9, 1984).
13. Section 8(2) of the Privacy Act sets out 13 wide categories in which the disclosure of personal information to third parties is authorized.
14. C. Bay - "Comment", in J.D. McCamus, Freedom of Information: Canadian Prospectives (Toronto: Butterworths, 1981), p. 23
15. See discussion in John Naisbitt, Mega-trends (New York: Warner Books, 1984), p. 197.
16. Malinski v. State of New York (1945), 324, U.S. 401, 411, (Frankfurter, J.)

CANADIAN PRIVACY LEGISLATION IN COMPARATIVE PERSPECTIVE

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My object is to make some comparative comments on privacy and data protection laws. It is a difficult task, in part because the audience contains a number of people who are experts on various aspects of the subject. We are all very pleased to see others in this audience bringing a new interest to the subject of protecting privacy, something that has been a late bloomer in Canada, certainly at the provincial level and in the private sector.

My main research interest is not simply trying to promote laws on privacy and data protection but in seeking to make them effective once enacted. This is an odd position to take in Canada because we are all well aware that there are nine Canadian provinces that do not have such legislation, even though I think it is admirable that the Honourable Norman Sterling is going to introduce a Privacy and Access Bill in the Ontario legislature tomorrow. Canadians keep thinking that they need to invent the wheel in order to do wonderful things, but in fact we are behind most of the Western world in data protection achievements, which is perhaps a useful point to make in beginning this presentation.

Most of my comments are directed to the public sector, simply because I believe that data protection legislation is needed first there. I happen to think that the private sector can pursue voluntary self-regulation for the moment and that it is incredibly presumptuous for the provinces (except for the province of Quebec) to be talking about regulating the private sector when they have not put their own houses in order by passing public sector data protection laws.

I know it is not the fault of either my panel colleague, John McCamus, who was Director of Research for the Williams Commission, or of the Minister, Mr. Sterling, that legislation has not been introduced before now in Ontario, but it is clearly about time that Ontario passed a data protection bill. Let me emphasize the point by reporting something about such developments in foreign countries. I will proceed from the most to the least effective laws, except for Canada, which is in a separate category at the end of my presentation.

West Germany has had a federal Data Protection Law since 1977 and counterpart state legislation. They are very effective statutes. The Germans have a

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co-ordinated system of data protection laws for the public sector and for the private sector, although the private sector regulation is relatively weak, because it is primarily self-enforcing. Instead of each of the eleven states passing their own novel law, all of the statutes look much the same, so a citizen wishing to exercise privacy rights is looking at relatively similar legislation. One prays, although it is unlikely to happen, that such rational coordination will occur in Canada, following the model of the federal Privacy Act of 1982.

The powers of the various Data Protection Commissioners in West Germany are advisory only, which I happen to think is very desirable; such power is comparable to that of our federal Privacy Commissioner. Data protectors do not really need pervasive regulatory powers; in Sweden and France, and in the proposed U.K. Data Protection Bill, such strong powers result in an incredible amount of bureaucracy and in relatively ineffective implementation of data protection, because of the paperwork burden.

Another important trait of the Federal Data Protection Commissioner's office in West Germany is that it has a very talented and dedicated staff. I am finishing a book on the subject of what makes data protection laws effective, and one really critical factor is who serves as the Privacy Commissioner or who heads up the Commission or the Data Inspection Board.

Moreover, if such leaders do not have really good staff, data protection can be just a form of window dressing. The state of Hesse has more than six million people and is thus comparable to Ontario, for example, in terms of population. Hesse has a very distinguished Data Protection Commissioner, Professor Spiros Simitis, who is also a major international influence in this field.

One problem in Hesse is that there are only ten staff people to implement data protection for the entire public sector. There is a tremendous risk of the staff simply being overwhelmed by their statutory tasks of regulating the col-

lection, use, dissemination, and storage of personal information. It is really a very overwhelming kind of situation. Simitis prides himself in being non-bureaucratic and in having a small staff. But the staff complain that they cannot do the work and acknowledge the risk of offering only the illusion of data protection. The worst offense is to pass a Privacy Law and then not really implement it in an effective way in the public sector.

The Germans are notable in data protection for carrying out inspections. Over a period of time, they actually visit personal information systems, audit the computers and the information that is being collected, and learn what is being done with it and how it is being transferred. This important inspection role is better done in West Germany than anywhere else in the Western world where data protection laws exist for the public sector.

I would also emphasize the importance of the fact that these West German Commissioners are all very independent individuals under the law, so independent in a way that when Professor Hans Peter Bull, the first Federal Data Protection Commissioner, came to the end of his five-year term, he was not re-appointed by a newly-elected conservative government, after having carried out effective data protection, particularly in the police and security fields.

There is also enormous controversy in Ontario over the law enforcement implications of Privacy and Access to Information laws. Yet the West German federal and state police have learned to live very well with data protection, after some initial shouting and screaming at one another. Germany has much more sensitive security issues, especially with the terrorist activity it has had in the last ten years, than we have in Canada; yet data protection has been implemented in the three security agencies, which seems surprising to the English-speaking world.

Some of the concern for law enforcement interests that emerged in connection with Bill C-43 at the federal level and that we are now seeing in Ontario is

really misplaced. The police in other countries have learned to live with data protection and privacy legislation; I should also acknowledge the success of the RCMP at the federal level in this country in learning to live with data protection. West Germans use a very collegial and non-adversarial approach to making data protection effective, which is a critical characteristic of good privacy and data protection activities.

I have time only to note that data protection is very controversial in Sweden. My view is that if data protection activities are not controversial in the public sector, then the Privacy Commission or Data Protection Commission is not really doing his or her job. These officials are given independence in order to articulate privacy interests on behalf of the general public; it is one of the primary activities of an oversight agency.

The French have an extraordinary data protection law, but they have not done much about implementing it. The law of January 6, 1978 created a very unwieldy seventeen-member Commission Nationale de L'Informatique et des Libertes (CNIL), who are part-time people. They have not done much in their first five years; moreover, they have had a very weak staff.

The CNIL now has a new president who is turning his attention to some of these matters, and there is a likelihood that it will become a somewhat less politicized and somewhat more effective agency. It is desirable that the new President of the CNIL, M. Jean Rosenwald, is not a politician, because I do not think an active politician has functioned very well in that particular post in the past.

In its first five years the CNIL has demonstrated a lack of political will to resist the government on significant issues concerning the creation of new information systems. The French situation specifically illustrates the risks of an agency of this type providing only an illusion of data protection rather than the reality, particularly in the public sector.

The U.K. has a new Data Protection bill, which is discussed in detail elsewhere in these proceedings. We have been waiting for this bill for more than ten years. Now it looks like it will be enacted into law in the next month or two. I believe it is much too bureaucratic a law because of the paperwork involved. The British are registering users of personal information rather than uses; the latter is the normal way of proceeding.

It is estimated that there are over 200,000 users; past experience would indicate that there are probably many more. The Data Registrar will have a staff of twenty to thirty persons. The Registrar is going to have to be a superman or a superwoman to do the tasks assigned. The selection of the Registrar will be critical to the success of the legislation, since the person chosen will have to work extremely hard to make the legislation effective.

When we look at the U.K. bill from a North American perspective, it is an extremely powerful piece of legislation, because it requires all holders of personal information, both in the public and private sectors, to register and to comply with certain rules and regulations which have the force of law, including civil and criminal sanctions for breach of the principles of fair information practice. From a perspective within the U.K., some critics regard the bill as reasonably weak; the Registrar in fact does not have much power to do anything. You should be aware that within the U.K. there is considerable criticism of the inadequacies of the bill, in that it does not cover manual records, for example.

About the United States, I will simply note that there is a federal Privacy Act of 1974. It's fundamental inadequacy is that it does not include a Privacy Protection Commission, an oversight agency that would, on a continuing basis, articulate privacy interests against competing forces. It is primarily a self-enforcing law; where you do not like something, you have to go to court as an individual to enforce your privacy rights at the federal level, which has proven to be a very ineffective way of doing business.

One of the consequences of the lack of a Privacy Protection Commission is that such novel practices as computer matching of miscellaneous personal records are out of control in the United States. On the other hand, the United States does have strongly developed constitutional rights to personal privacy, which we do not yet have in Canada. The California constitution, for example, acknowledges the rights of citizens to enjoy personal privacy. Finally, New York state has passed a Personal Privacy Protection Law which goes into effect on the 1st of September of this year. What is important is that it includes an oversight agency, the Committee on Open Government, whose task is to make sure that the law is working in the public sector.

Turning to Canada on this quick tour, I like the federal Privacy Act. The role of the federal Privacy Commissioner is well-defined. Without in any way casting any aspersions on the incumbent, Dr. John Grace, when I reflect on a law that has only been in effect for eleven months, I am reminded that a Privacy Commissioner and his staff need to be activists in order to make data protection effective. You have to make inspections of government agencies in order to find out what is really happening in terms of the collection, retention, and use of personal information by the federal government.

I happen to believe, and I am more than a little perverse in this perspective, that all of the emphasis on rights of access by individuals to their records under the Privacy Act is misplaced. In fact, it is not the most important activity in the Western world, even though in Canada we have tended to emphasize that aspect of Privacy and Access to Information. I really believe that the staff of a Privacy Commissioner must learn what records actually exist, question the existence of records, if necessary, and help to destroy unnecessary personal data, in order to make data protection effective.

I want to highlight the fact that Quebec is the only province in Canada which has public sector data protection with its Law 65. The Quebec Commission

d'access a l'information is one of the most powerful regulatory commissions that I have ever encountered in this field. It has oversight over 3,600 public agencies, including schools and hospitals. It has considerable administrative power to establish the criteria for the collection, use, retention, and transfer of personal information. Law 65 enters into full effect on the 1st of July of this year. My fear is that the modified French model that is being used in Quebec is going to be much too bureaucratic to be effective, that the Commission is simply going to be overwhelmed with paper, even though I applaud the fact that the choice of Commissioners has been extremely good. In the first instance only one of the three Commissioners is a lawyer, and two of them are women, which I regard as twin forms of progress.

I would like to close with a list of ten commandments about data protection. I can hardly give you the rationale for each of these points here, but it will recapitulate the finding of the tour I have been giving you.

It is an absolute necessity to have privacy and data protection laws for the public sector and for sensitive applications of personal information in the private sector. One of the fundamental inadequacies of most such legislation, at present, is that it does not adequately define the privacy interests that are supposed to be protected by such legislation. Most of the laws simply assume that privacy is a good thing, but make no effort to tell you exactly what this privacy business is that is supposed to be protected. Society places considerable power in the hands of civil servants, and there is always the risk of Data Protection Commissioners or Privacy Commissioners exceeding their mandates.

I further believe that Privacy Commissioners and data protection agencies should concentrate on data protection. No such commission in the Western world has more than thirty-five staff. Although such anti-bureaucratic tendencies are desirable, the risk is that the staff are simply going to be overwhelmed

by their tasks and are not going to be able to do the things that are necessary. So they should not be intimately involved with all of the questions of information law or information policy that, in many ways, they are well qualified to treat. The protection of privacy in the public sector is so important that data protectors should basically stick to that task.

You cannot have successful data protection laws without data protection agencies. I am pleased that in Ontario Mr. Sterling is talking about the creation of a Data Protection Office, but I find it perverse to be proposing a Data Protection Office separate from that of the Privacy Commissioner. This is another "unique" Ontario initiative that I find dubious. The task of data protection is difficult enough without creating two separate offices.

It is extremely important that Data Protection Commissions be organized in an effective manner. It may seem simple minded to make this point, but it is a critical issue, based on the experience with implementation that I have observed to date. The quality of people who actually help the Commissioners do their work is really going to make the difference in the long run.

The independence of the Commissioners is also critical. In almost every country, these extraordinary Privacy Commissioners, if I may simply call them that, have been given a considerable degree of independence from the government, because the work they are doing is so important. In almost every instance such status is a unique constitutional position, which is essential to the successful conduct of data protection.

I also believe in advisory powers for data protectors as opposed to strong, regulatory capacity to issue commands. I really think that privacy is to a considerable extent a vague and inchoate concept, that protecting it really should be a matter of balancing interests and of debate back and forth among the regulators and the regulated. Given the small size of the agencies, the process of implementation needs to have

an "advisory" character in order to make data protection effective.

Among the important powers of a data protection agency is the capacity to receive complaints from citizens, which will be few and far between, but will nevertheless alert the agency about areas that the public are concerned about.

It is also necessary to have the power to carry out audits and inspections of personal information systems. The Data Protection Office in Ontario should be examining the O.H.I.P. system, should be finding out what is actually happening in the welfare systems, and should really contest, debate, and question the retention, collection, use, dissemination, and transfer of personal information by government agencies.

Data Protection Commissioners also have a fundamental obligation to pay a lot of attention to evolving information technology, even though I sometimes believe that information technology is so far ahead of the regulators that there is not much chance of them catching up anyway. The kinds of world information networks for personal information that already exist are in many ways already far beyond national regulation; one need only look at the world wide information networks of the Canadian chartered banks. Nevertheless, data protection agencies have the responsibility to monitor these developments and to alert the politicians and revisors of their legislation as to the real state of play in this connection.

Finally, it is my view that the ultimate task of the Data Protection Commissioners is to develop specialized protective legislation and regulations for each type of personal information system.

It is all very well to have a general federal Privacy Act, but we should now be working on improving specific provisions on confidentiality and data use in, for example, the Income Tax Act, the other federal statutes on personal information, and, ultimately, in such private sector legislation as the federal Bank Act.

Thus, making data protection effective in the public sector in Ontario will be an enormous task, even if legislation is enacted that can stand comparison with the accumulated experience of the last fifteen years in other countries.

Editors Note: Unfortunately, the President of CNIL, M. Rosenwald, referred to on Page 69, died on June 2, 1984. His successor as President is M. Jacques Fauvet.

PANEL 3: PRIVATE SECTOR PANEL: "PRIVACY:
WHAT THE PRIVATE SECTOR HAS DONE"

CHAIRMAN: Professor David Flaherty *

PANELISTS: Ralph Hancox
Robert G. Logan
Eric Wimberley

COMMENTATOR: Mel Fruitman **

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** Mr. Fruitman is the Research Manager of the Retail Council of Canada. He is also Vice-President of the Payment Alternatives Communications Exchange (P.A.C.E.). This organization was formed in 1982 and its objectives include: promoting co-operation among sectors such as retailing, banking, equipment suppliers, telecommunications carriers and consumer representatives; exchanging information; representing the interests of members in electronic funds transfer and point of sales (EFT/POS); promoting standards leading to compatibility for an EFT system; clarifying members' needs; maintaining liaison on EFT/POS developments; and encouraging the development of EFT/POS in Canada.

MAILING LISTS AND DIRECT MAIL MARKETING

RALPH HANCOX *

President

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At the outset, it might be useful, to put the privacy issue into perspective so far as direct mail marketing and mailing lists are concerned.

Unsolicited mail has a high profile in some quarters and, according to various prominent consumer protection spokesmen, has also voiced opinions on the subject, a high irritation factor also.

At the total mail volume delivered by Canada Post in recent years - about six billion, four hundred million pieces annually - some fifty percent, or three billion two hundred million pieces, fall into this category.

This approximates an average of a little less than two pieces of unsolicited mail (including bills) per household per delivery day. It is axiomatic that Canada Post would like to increase this average since this class of mail is, by virtue of its pre-sorted, batched characteristics, the most profitable kind of mail packet to handle.

It should also be said that, in Canada, direct mail marketing is an undeveloped sales technique. In a comparison with the United States our volumes are easily less than one twentieth of theirs per capita.

A variety of countries have tested public opinion on the subject of intrusion by mail and, it is true, there is a portion of the general public that would class unsolicited mail as an 'invasion of privacy'.

This small body of opinion also responds favourably to the sobriquet 'junk mail' which is applied by critics to undressed mail packets.

But when the privacy issue of mail delivery is tested on the spectrum of substantive privacy issues such as :

Would you regard it as an invasion of privacy if:

- ° one department of government made personal data from your file available to another government department?
- ° you were required to carry an identification card bearing your social insurance number?
- ° your neighbour allowed her dog to defecate on your lawn?
- ° you were regularly approached by door-to-door sales personnel to buy unsolicited merchandise?

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° you were asked to supply personal information over the telephone to a caller not known to you?

unsolicited mail as a privacy issue becomes of negligible concern.

Similarly, on the question of mailing lists and the renting of names (which has been criticized in some quarters as an invasion of consumer privacy) public indignation - which in any case has never been high on this subject in North America - becomes inconsequential in the face of such questions as:

Who would you wish to intercept, or prevent the delivery of, unsolicited commercial mail destined for delivery to your household:

- ° the government?
- ° the post office?
- ° an independent agency?
- ° an industry association?
- ° the police?
- ° none of these?

Would you prefer to do it yourself?

When the question is asked:

Would you object if a

- ° charitable organization,
- ° commercial enterprise,
- ° local merchant,
- ° direct mail marketing organization,
- ° magazine publisher,
- ° social club,
- ° health and fitness organization,
- ° government department,

took your name and address from a telephone directory

to solicit your support,
to ask for a donation,
to offer goods or services for sale,
to distribute information?

the answer reveals a very low level of anxiety in respondents about mailing lists.

It goes without saying that the weight of these answers can be very rapidly

altered by phrasing questions to introduce the concept of the direct mail, marketing, or delivery, of pornographic or other material generally regarded as offensive or unsolicited material to children.

There is a further change of attitude when the unknown mailer uses information which is quite clearly personal in nature.

'In your garage you have a brand new Ford... would you like a set of seat covers... '

'You, your husband and three children will be delighted with... '

Such approaches immediately raise the questions:

'How did they know... ?'

'Where did they get my name and address... ?'

Those who compile mailing lists, and those who send unsolicited sales promotions to addresses on such lists, have a common interest in limiting and guaranteeing the information involved.

Such lists should contain up-to-date addresses - that is to say, people on the list should be at the address stated. They should also be among those who have a high probability of responding to unsolicited mail. They should not contain names and addresses of people who object to unsolicited mail, or who have died.

It is expensive to plan, direct and control a mail marketing campaign. The efficiency of the response levels is crucial to profitability.

Thus mailers share with recipients a desire not to send mail to those who genuinely do not want it. (The question of sending unsolicited merchandise and the billing for it is, of course, another question already covered in consumer legislation.)

The question, always, for the mailer is how to avoid sending material to those who will never respond.

One way of increasing the probability of response and increasing response levels of mailing lists is to compile historical information on buying patterns and preferences of individuals on that list and to code lists with demographic and other sociographic information.

Such information can be weighted and regression formulas can be applied to name selection. In such a process, each name on the list to be regressed would receive a score. Only those names whose scores exceed a certain level would be selected from the list to mail.

The more accurate the regression, the more closely a direct mail marketing campaign can approach the nirvana of mailing only to those who respond favourably.

In fact, as the state of the art now is, a reasonable response level is a low percentage, normally well below ten percent. An acceptable improvement from regression would be a one percent or even .75 percent increase in response.

The percentage of respondents, depending on a variety of factors, may be always in that order of magnitude for a particular list, but the individuals in that list who respond on successive occasions will be randomly distributed throughout the universe and may seldom respond twice to repeated mailings.

The notion, therefore, that direct mailers can - or would want to - make sinister use of information on mailing lists, or any use except to increase the response level, is highly fanciful.

The issue of intrusion is also raised in discussions of unsolicited mail and, should, perhaps, be disposed of in this attempt to set the perspective.

Direct mail marketing is, among selling methods, a low pressure sales technique, the initiative for which, after the first mailing piece has been dispatched, is always in the hands of the buyer. Consider the following:

A potential customer receives a mailing piece. The customer can decide to open the envelope or discard it.

If the customer opens the envelope, the contents will either prompt an order or be discarded.

If the customer places an order, the order must be put in an appropriate envelope, be stamped and be mailed, giving time for further reflection.

If the order is mailed, the customer will receive the goods ordered and may accept them, hold them for a trial period or return the goods to the merchant.

Then, of course, comes the task of billing and payment. The merchant trusts and prays that the payment response level matches the original response level for orders.

Three points are of interest to conclude this part of the discussion:

1. In places where an opportunity exists for consumers to remove their names from mailing lists, not many people do so (in Canada, some 27,567 people or some .34 percent of the active households have registered with the Canadian Direct Marketing Association for this purpose).
2. Significantly more people ask to be put on mailing lists than ask to be taken off in the American experience.
3. The trading of mailing lists which are up-to-date and which are marked with data already in the public domain - such as address and postal code - is an economic benefit to the industry and the consumer. (So much so, incidentally, that a state advisory committee concluded in Illinois that 'the sale of driver license lists by a government unit to direct mail firms does not constitute an invasion of privacy' and that it should be encouraged by legislation.

That same committee made another point which neatly leads into the next body of issues to be considered.

In a discussion of whether applicants for a driver's license should have the option of excluding, by check-off, their names from the list that the State of Illinois could trade, the committee reported thus:

'We have examined the practical effects of... granting an option... to preclude the Secretary of State from disclosing information as to applicant's name, address, date of birth, and other related information... The objective of the check-off would be to protect persons from the receipt of unsolicited mail. We find that the check-off would not achieve the objective sought... The likely result would be that the Secretary of State would be criticized for misleading persons and not preventing the delivery of unsolicited mail...'

This comment is very true. As the Australian Law Reform Commission found when it examined the whole issue of privacy in all its aspects. It quotes the following passage in support of its recommendations on mailing lists:

'If an individual does not want to receive unsolicited mail, he can keep his name off most lists by becoming a modern-day hermit - by paying cash for all his purchases, not owning a car, giving to charities anonymously, always buying magazines at newsstands, never responding to door-to-door surveys, never signing a petition or guest book, never registering to vote, never attending a meeting or conference, or newsworthy or social event... even so he may get a certain amount of unsolicited mail addressed to the occupant.. '

Here, the author has chosen to interpret the individual as a male. We are all aware that, in the same household may live a male and a female who have differing views on whether that household, or one of the occupants of it, should be on, or off, mailing lists.

In the discussion of various legislative models contained in the discussion paper circulated at this conference the registration of mailing lists is reviewed.

When Sweden took this approach it expected registrations at barely one hundred such lists; its registration office, however, was swamped with applications for thousands.

This is very understandable. An enormous number of lists are compiled for the purposes of mailing information to various universes. Clubs do it, schools do it, even mothers and politicians do it.

And in a communal society, it is very desirable that we do do it because it is all part of the network of the free flow of information.

As we have already noted, it is in the interest of the commercial mailer to ensure, as far as is possible, that the names on the list to be mailed are favourably disposed towards the mailing, contain only information which will enhance the efficiency of that mailing, are up-to-date and are judiciously used.

In a study commissioned for the Council of Europe, John Braun made this observation:

'If it is accepted that the use of the mail is open to anybody -- list or no list -- and that what is relevant is the content of the mailing piece and not the act of mailing, then the issue to be faced is one of detriment. Is there anything in the content of the mail which offends against fair trading, honesty, morality, taste or any of the many possible alternatives? If the respondent is misled or likely to be misled or defrauded or shocked by the nature of the communication, there is cause for intervention by the appropriate authority'.

In most jurisdictions, such matters are already covered in legislation or regulation. What is not always covered and which, in the growing opinion of observers, should not be, is the registration,

content, or use of commercial mailing lists.

The reasons, most generally are those of cost and impracticability.

The further and most powerful reason, of course, is that the process of self-regulation is in the best interest of users, society and recipients, in any case.

This does not imply that there are no abuses and no weaknesses and no faults where self-regulation is applied. There are; but these can be shown to be far less than those which would occur and have occurred in legislatively regulated systems.

Consider, for example, the anomaly in a jurisdiction, where it would be illegal to publish the sex or political affiliation of members in a list of names and addresses of the constituents of a legislative assembly. This sort of thing is one of the hazards of an over-zealously worded privacy regulation.

As far-fetched, but equally absurd, would be a requirement for clubs, say, to register their lists of members, and submit the information contained on such lists for approval, by club members. This regulatory precaution would be against the eventuality that the list might be rented or sold to a commercial enterprise with a legitimate interest in mailing the people on it.

The Organization for Economic Cooperation and Development has published guidelines governing privacy protection where mailing lists are concerned and these have been widely embraced. The U.S. and Canadian Direct Mail Marketing associations and marketing groups in Europe, British and Scandinavian countries have all adopted codes of conduct and it is of interest that such actions have taken place in countries where legislation is in place and where it is not.

Essentially, all these codes embrace the following principle and concepts contained in Reader's Digest's code.

1. Personal data collected and stored are limited to those relevant to the efficient marketing, order processing, servicing, billing and collection of payment for the company's products and services, and are used only for these purposes.
2. The personal data files are frequently updated with new information to ensure that they are accurate, complete and current.
3. Reader's Digest responds on a timely basis to written requests from Customers or other individuals (or their documented legal representatives) for summaries of their personal data in the file. Personal data shown to be inaccurate, obsolete, or incomplete are corrected.
4. Except for debt recovery purposes on behalf of Reader's Digest or when required by law, personal data are not released to third parties.
5. Strict security procedures are maintained to protect against unauthorized access, destruction, use, modification or disclosure of personal data on Reader's Digest Customers.
6. Reader's Digest supports efforts of industry associations to which it belongs to encourage the disclosure of list rental or exchange policies and the offer of a name removal option by companies who engage in those practices.
7. Reader's Digest honors on a timely basis all requests from those who do not wish to receive its promotional mailings by appropriate notation to the file. The requests may be received directly or through third parties, such as consumer and industry associations or government agencies.
8. Reader's Digest complies with all local laws and regulations relating to data protection and privacy.

Reader's Digest does not rent or trade the names and addresses of its customers, incidentally.

Progressive companies are increasingly adopting well formulated and responsible voluntary codes, which, if they contain such elements as those outlined in the Discussion Paper circulated for this meeting would render anything but an umbrella statute unnecessary.

Along these lines, the Australian Law Reform Commission, in its recommendations has struck the right balance. It is perhaps, worth repeating the essential elements of a worthwhile code on list management to bring this presentation to a close.

- ° Personal information should be obtained and processed fairly and lawfully;
- ° Personal information should be held for a specified and legitimate purpose or purposes;
- ° Personal information should not be used or disclosed in a way incompatible with those purposes;
- ° Personal information should be adequate, relevant, and not excessive in relation to the specified purposes;
- ° Personal information should be accurate and, where necessary, kept up to date;
- ° Personal information should be kept in name linked form for no longer than is necessary for the specified purposes;
- ° The data subject should have access to information held about him or her and be entitled to its correction or erasure where the legal provisions safeguarding personal data have not been complied with;
- ° Appropriate security measures must be taken against unauthorized access, alteration or dissemination, accidental loss and accidental or unauthorized destruction of data.

It is self-regulation that prompted the Australian law commission on reform to conclude:

'The commercial benefits arising from adoption of these methods (which I described earlier) by direct mailers (in particular, reduced cost of mailing, improved returns, enhanced customer goodwill) provide motivation to members to pursue these schemes. This facilitates market advantages of the direct mailing system, which includes increases in sales of goods and services and expansion of employment proposals while minimizing the number of people receiving unsolicited communications..

PRIVACY BEGINS AT HOME

ROBERT G. LOGAN ^{*}
Director, External Programs
IBM Canada Limited

The foundation for IBM's practices on privacy began with employee privacy and is based on the company's principle of "Respect for the individual". The company has always recognized the need for positive employee relations and consequently focussed first on employee information practices long before privacy itself became a public issue. Moreover, because of the nature of its business, IBM as a computer manufacturer believes that it has a special responsibility to establish and maintain unusually high standards, not only with respect to data security but in the way it manages personal information about its employees as well.

Hence, at IBM we believe that "Privacy begins at home". Indeed, "home" is wherever personal information is being handled.

Therefore, the protection of information and data security is best accomplished by the users after consideration of the particular environment, the need for protection, and the purposes of the data.

Inherent in such a decision is defining two terms which are often confused - privacy and data security. Although they are closely related, there is a distinct difference between the two. We believe privacy to be a socio-legal issue concerning the kinds of information held in record-keeping systems and

the purposes for which the data is used. Data security on the other hand is a technical and procedural issue concerning the control and protection of information. The two terms should not be used interchangeably.

Privacy is an old concept which focuses on the protection of information, while data security is a relatively new concept relating to the integrity of record keeping or filing and quite often is resolved by a mechanical solution.

Privacy can conflict with other fundamental rights - for example - freedom of information.

Privacy therefore, becomes a balance between limiting access to information to protect privacy and allowing freedom of information in the public interest, thus permitting users of information to meet the needs of society and to provide good and efficient services.

What is the role of the private sector in responding to the privacy issue and does it differ from the public sector? I will return to this but first let me tell you about our experience with privacy.

At IBM, fair information practices have evolved over a long period of time - almost 20 years to be exact. Of course, concerns regarding privacy preceded both IBM and the advent of computers. Writ-

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ing in the Harvard Law Review in 1890 Louis Brandeis warned of "mechanical devices" that would threaten the solitude and privacy of individuals. Because of a cluster of new inventions, he noted, a "next step" was needed to protect a person's "right to be left alone". That warning went largely unheeded and the mechanical devices he wrote about so warily -- the camera and the telephone -- quickly passed into familiar use and abuse.

Computers simply increased the concerns of those who would protect the individual from the misuses of technology. IBM Chairman, Frank Cary, stated in the Harvard Business Review in 1976:

"Organizations have invaded people's privacy with steel filing cabinets and manila folders for years. But computer systems with remote access have intensified both the problem and the public concern."

IBM believed that the way to take some leadership in this area was to clarify its own position regarding employee privacy in personnel recordkeeping.

This issue actually dates back to the 1960's in IBM when an employee requested to see his personnel folder and was refused by his management in accord with company practices at the time. The issue was reviewed and practices were changed making provision for employees to review their personnel folders.

In 1971, IBM commenced a study of the status of employee data within the company culminating in the publication of four principles of privacy in 1974 which were nationally advertised in magazines and newspapers;

1. Individuals should have access to information about themselves in record keeping systems. And there should be some procedure for individuals to find out how this information is being used.
2. There should be some way for an individual to correct or amend an inaccurate record.

3. An individual should be able to prevent information from being improperly disclosed or used for other than authorized purposes without his or her consent, unless required by law.
4. The custodian of data files containing sensitive information should take reasonable precautions to be sure that data are reliable and not misused.

Also, in 1974, IBM commenced a management training program on employee privacy. Discussion ranged from an employee's right to ask questions about what is in the personnel file to the propriety of telephoning or visiting employees at home. As a result of these training programs, many privacy-oriented issues arose and many changes in practices and procedures were implemented. Privacy became a part of the fabric of every IBM manager's job.

In 1975, IBM published a newly developed set of practices for managing employee personal information and distributed this to all employees:

1. Collect, use and retain only personal information that is required for business or legal reasons;

For example, data no longer included on employment applications are: birth date, spouse's employment, relatives employed by IBM, military service, and previous addresses.

Furthermore, while it is traditional to publicize employee promotions, reassignments, awards and other achievements, employees are now asked beforehand if they agree to such publicity.

2. Provide employees with a means of ensuring that their personal information in IBM personnel records is correct.

The core of IBM's effort to ensure employee records are both accurate and fair is that its practice of open access with relatively few exceptions such as personnel planning data, permits employees to see and correct files containing information about themselves.

3. Limit the internal availability of personal information about others to those with a business need to know.

For example, the employee's manager does not have access to such things as payroll deductions, medical records and selected employee benefits.

4. Release personal information outside IBM only with employee approval, except to verify employment to satisfy legitimate investigatory or legal needs.

For example, without written approval, the only information IBM will release outside the company about an employee is for employment verification purposes and is limited to an individual's last position title, last location, and dates of employment. This holds true for former employees as well.

In 1976, IBM's privacy program was applied worldwide in the 124 countries where it does business.

Finally in 1981, IBM published 7 principles in handling personal data which took the issue of privacy beyond our employees.

- PURPOSE OF FILE CLEARLY DEFINED and in support of valid company business.
- COLLECTION ONLY OF PERSONAL DATA needed and, by fair, lawful means and reliable services.
- USE LIMITED to defined purposes.
- INFORMATION RELEVANT, correct, complete and up-to-date.
- RIGHT OF ACCESS of data subject compatible with valid business interests of company.
- SECURITY MEASURES adequate and relevant to classification of data.
- PERSON RESPONSIBLE for file identified.

These principles or guidelines were applicable to both manual and compu-

terized files and to all data subjects including both individuals and companies.

These self-imposed guidelines are in accord with the OECD "Guidelines on the Protection of Privacy and Transborder Data Flows of Personal Data".

We believe they provide maximum flexibility to meet changing technology yet provide the required protection of personal information. Hence our support at IBM for the OECD Guidelines which we hope Canada will support in the near future.

This brings me back to the question on the difference between the response of the private and public sectors to the issue of privacy.

In the case of the private sector, the relationship is selective. In other words, you can refuse to provide personal information if you feel the enterprise is not self regulating with regard to the way it handles its records.

On the other hand, there is a forced relationship with the public sector - that is, you are required by law to provide information from womb to tomb, for example birth and death certificates.

This is at the crux of the public debate on privacy and freedom of information.

I'm sure you will agree that you cannot approach this issue of privacy in the private and public sector in the same way. From all this I draw the following conclusions for the private sector:

1. Protection of privacy is a social responsibility shared by all users of personal information. Computers have not altered this.
2. Voluntary or self-imposed guidelines for access to personnel records are far better than legislated mandatory standards.
3. Governments must identify the basic objectives of privacy protection in all forms and promote their pursuit.

Initiatives on privacy can be likened to the introduction of the automobile - governments of the day considered a proposal that a person be required to walk in front of the auto with a red flag. Fortunately, responsibility for the operation of the auto was awarded to the driver.

ERIC WIMBERLEY *

Vice-President, Association Affairs
Canadian Cable Television Association, Ottawa

Good afternoon ladies and gentlemen. My name is Eric Wimberley and I am Vice-President, Association Affairs, for the Canadian Cable Television Association.

Our Association was formed back in 1957 by a group of entrepreneurial cable operators who recognized the need even at that early stage for some sort of coordination in the development of an industry which at that time represented only small pockets of the population mainly in the urban areas of Canada. Today the cable industry has grown to cover more than 60% of the Canadian population. The CCTA now represents some 380 cable licensees from Newfoundland to Vancouver Island who in turn serve some 4.8 million subscribers or approximately 95% of all Canadians who receive television via cable.

Background

Using a sophisticated antenna system, the cable operator is able to offer his subscribers signals which would not otherwise be available to them. Until a few years ago a typical system however still consisted of the basic twelve channels located in the VHF band. Today, 35 channel systems are considered more or less normal in Canada, and 54 channel systems are not far away. In the United States, where the regulatory environment is considerably different to Canada, 108 channel systems exist.

The variety of services which can now be offered to a subscriber by the television system is one reason we are here today. Until very recently every cable subscriber to the system received the same signals. A cable was installed from the trunk line on the street to the subscriber's TV set and the complete range of signals offered by that particular cable company was brought into the home.

Discretionary Services

However, with the advent of Pay TV just over a year ago, cable operators were able to offer their subscribers a number of discretionary services, discretionary in that the subscriber can choose to receive the additional service or not, or in fact to receive only a portion of the additional service.

This fact has led to the requirement for a device in the home which most people know as a decoder but which is more properly termed a home terminal unit. This unit enables the cable operator to address each individual subscriber to his system directly from the cable company office and to offer each individual subscriber the particular discretionary services which that subscriber wishes to receive. Obviously the cost of the service to a particular subscriber will depend to a degree upon the services to which he chooses to subscribe.

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In order to provide adequate service and to properly bill the customer, the cable operator must of necessity know just what services that subscriber is receiving. The simple recording of this information should not in itself be considered a threat to the subscriber's privacy. It is simply the recording of information necessary for billing purposes, similar to that recorded for example by the telephone companies in relation to long distance charges.

Sometime in the future however we expect to provide two-way services to our subscribers. The service will be provided and the individual subscriber's response to the service will be received in the cable company office. It is the collection of this individualized data which has led the cable industry to review its position as to its responsibilities regarding treatment of that data and what effect this information might have on the privacy rights of a particular subscriber.

Although a very few cable systems are experimenting with two-way services even now, in our opinion it will be some time before these services become widespread. Fortunately this provides time for us to assess the situation and to develop a workable code which addresses the interests of both the consumer and the industry.

The Study

Early in 1983, immediately following the introduction of the first discretionary services, the cable industry, through its National Association the CCTA, initiated a study into the necessity for a Code of Privacy for the industry. We looked first to our counterparts in the United States where discretionary services have been in existence for some years.

We reviewed the existing codes of a number of large cable companies and American Associations including Cox Cable of Atlanta, Georgia, the New Jersey Cable Television Association, the New England Cable Television Association, the Videotex Industry Association of

Washington, D.C. and the often mentioned Warner Amex Code of Privacy. In addition, the Privacy Code developed internally by Rogers Cable, the largest cable operator in Canada was also examined.

Through this study, we have developed what we believe is a Privacy Code which will adequately protect the interests of cable subscribers in Canada. Earlier this year it was reviewed by our Board of Directors and it in turn has recommended acceptance by the National Association membership. The proposed Code will be discussed at the Annual General Meeting scheduled for the second week of June in Ottawa at which time we expect it will be accepted by the general membership of the Association.

The Code

While I obviously am not at liberty to release the proposed Code pending acceptance by the membership I can outline the areas of concern which it addresses.

Information Collection: The Code will require that individual subscribers be made aware of the information which is being collected and the reasons for the collection of that information. Only information necessary to permit billing or to provide adequate service to the subscriber will be collected and will be retained only as long as is necessary for billing or servicing purposes and will then be destroyed.

Security: All reasonable steps will be taken to ensure the physical security of the information collected. Access to data collected will be restricted to employees who are directly concerned with the operation of the services involved.

Subscriber Access: Subscribers will be allowed reasonable access to information on file and the right to have erroneous information corrected.

Third Party: Adherence to the Privacy Policy will be required of any third parties who may participate in providing services to the cable companies' subscribers.

Legal Compliance: Individual subscriber information will be made available to government agencies only under court order or other legal compulsion and, unless prohibited by law, subscribers will be made aware of any such legal requests for information.

Policy Review: And finally since our industry is subject to very rapid change, there must be provision for a review of the Code of Privacy, in order to ensure that current legal and technological developments are adequately addressed.

Industry Position

We believe a voluntary code will adequately address privacy requirements of the cable industry and will provide the flexibility which is necessary for the cable industry to adapt to the rapidly changing environment in which it must operate.

While cable is viewed in many quarters as a monopoly, and perhaps at one time this was true, such is not the case today. Today cable must compete with a variety of other services all trying for the subscriber's time and dollar including live theatre, more sophisticated home antennas, earth stations which can receive a wide variety of satellite delivered services and of course the recent explosion in the home VCR market.

Government regulation is not new to our industry. The Canadian Radio-Television and Telecommunications Commission closely regulates what a cable system can and cannot do. However even this Commission has recognized the need to ease the regulatory load wherever possible in order to allow the cable industry to respond adequately to the increasingly competitive environ-

ment in which it finds itself. In our view, government regulation, either federal or provincial, of a matter which can adequately be addressed by the private sector would be premature.

Of course there is another way. One well-known writer stated that "in order to avoid invasion of privacy, one need only arrange one's affairs in such a boring fashion that no one wishes to find out about you in any case".

Thank you!

PANEL 4: PUBLIC SECTOR PANEL: "PRIVACY: SOME PRACTICAL SOLUTIONS"

CHAIRMAN: Jacques Fremont *

PANELISTS: Hugh V. O'Neill
Caroline Pestieau
Douglas D. Smith

COMMENTATOR: William Atkinson **

* Professor Fremont, a member of the Quebec Bar since 1978, is currently Assistant Professor in Public Law at the University of Montreal Law School. From 1978 to 1980 he worked on a Ph.D. thesis at the London School of Economics and Political Science on the Judicial Control of Confidential Administrative Documents in a Comparative Perspective. His thesis is currently being completed.

* Mr. Atkinson is a barrister and solicitor who worked with the Quebec Government from 1975 to 1983. He was involved with the drafting of Bill 65 in Quebec, an Act respecting access to documents held by public bodies and the Protection of Personal Information. Mr. Atkinson is currently in private practice with Drouin and Associates in Quebec City.

ABSTRACT: FAIR INFORMATION PRACTICE AND COMPUTERS

HUGH V. O'NEILL *

President

American Society of Access Professionals

Background of Fair Information Practice

More than a decade ago, an advisory committee to the U.S. Department of Health, Education and Welfare issued a fundamental statement of information policy and practice in a report called "Records Computers and the Rights of Citizens".

The July 1973 report of the Advisory Committee on Automated Personal Data Systems found that, at that time, a person's privacy was poorly protected against arbitrary or abusive record-keeping practices. To safeguard the privacy of individuals and in recognition of the need to establish standards of record-keeping practices appropriate to the computer age, the report recommended the enactment, by Congress, of a Federal "Code of Fair Information Practice" for all automated personal data systems.

The five basic principles on which the Code rests are as follows:

1. There must be no personal data record-keeping systems whose very existence is secret.
2. There must be a way for an individual to find out what information about him /her is in a record and how it is used.

3. There must be a way for an individual to prevent information about him/her that was obtained for one purpose from being used or made available for other purposes without his/her consent.
4. There must be a way for an individual to correct or amend a record of identifiable information about him/her.
5. Any organization creating, maintaining, using, or disseminating records of identifiable personal data must assure the reliability of the data for their intended use and must take precautions to prevent misuse of the data.

There are certain exceptions to these principles in the interest of some greater need -- a couple of examples:

1. There are times when individuals should not be given access to records on themselves, e.g., in order to protect confidential sources in investigations or in the interest of national security.
2. There are times when other societal goals outweigh the need for privacy, and that in such cases information should be disclosed and used without

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the consent of the individual for purposes other than the specific purpose for which the information was originally collected, e.g., in compelling circumstances affecting the health or safety of a human being, including life-threatening situations.

A balance must be struck so that all statutes, regulations, and policies controlling personal information incorporate the basic principles of the canon while at the same time permit society's other goals to be effectively and efficiently achieved.

Both sets of goals may be achieved by adhering to the principle of due process, including openness in the decision-making process. Exceptions to the Code's principles should be permitted only when the public at large has been alerted, through congressional or state legislative hearings, notices of proposed rulemakings, open deliberative meetings and through professional literature and the general media. It is essential that interested parties, including the public whenever appropriate, be given an opportunity to participate fully in the decision-making process, e.g., the decision to use/disclose information for purposes other than those for which the information was originally collected.

Decisions to make exceptions to the privacy rights guaranteed individuals by the Code's principles should only be made at the highest and most responsible level of government and should take the form of a Federal or State statute, presidential executive order, order of the governor, or formal rule or regulation, so that the public will be fully informed of any action taken.

The Privacy Act of 1974 was the first legislative step in implementing these principles on the Federal level. At the State level, ten States have thus far enacted a comprehensive privacy protection law--either called a Privacy Act or a Fair Information Practice Act. The ten States are: Arkansas, California, Connecticut, Indiana, Massachusetts, Minnesota, New York, Ohio, Utah, and Virginia.

Computer Technology - 1984 and Beyond

The following characteristics are relevant:

- Increased speed--moving toward a billion operations per second and larger memory capacity
- Fifth generation of computers to include artificial intelligence
- Computer networks--central computers with terminals
- Network of Computers--large central processing systems connected
- Network of data banks devoted to a single area of interest
- Network of data banks devoted to a variety of interests
- Personal computers, home computers, word processors operating in both networks and as stand alone machines
- Both technical and management problems with respect to computer security--computer crime on the increase
- Computer-matching used to compare records on millions of individuals in different data banks--operating at various levels of government: Federal, State and Local
- The connection of government and private sector computerized data banks
- International computer networks cross the boundaries of national law.

Conclusion

Considerable effort has been expended to attempt to maintain adequate and reasonable safeguards for the use of computerized information systems. The legislative and executive branches have both tried to implement the fair information practice principles. However, there is a need for a continuing and even an increased level of effort, if we are to

se the most advanced computer -communications technology and still protect the rights of individuals.

Recommendations

the following initiatives for 1984 and beyond:

Enacting Federal legislation and designing model state statutes for computer protection/crime situations

The use of computer technology for the implementation of fair information practice principles, example: access to an index of personal data files through remote user terminals, computer techniques to enhance security

The design of safeguards for computer applications especially for computer-matching and screening--general safeguards in legislation, more detailed safeguards in regulations and policy statements

Follow-up, audit, evaluation to ensure that practice follows the legislative, regulatory and policy safeguards

The drafting of second generation fair information practice statutes (The Privacy Act of 1974 is an example of a first generation fair information practice statute)

The establishment of an entity with adequate resources and priority to:

- assist in the above recommendations
- to perform long-range planning - trying to lock the barn door before the horse is stolen
- assist in the controlled sharing of computerized information

In sum, both the entity in the executive branch and the legislative branch should work toward the implementation of a proper balance so that statutes, regulations, and policies controlling personal information incorporate the basic principles of fair information practice while at the same time permit society's other goals to be effectively and efficiently achieved.

CAROLINE PESTIEAU *
Commissioner
Quebec Access to Information Commission

In the next few minutes, I will be discussing the main data protection features of Quebec's Freedom of Information and Protection of Privacy Law. Before I begin, I should like to explain my understanding of the "practical solutions" in the title of our panel today.

More than two dozen countries, states and provinces have adopted Data Protection laws. In each case, their lawmakers have had to choose from a menu of principles, institutional arrangements, procedures and definitions.

In this presentation, I will be looking at the strategic choices Quebec's National Assembly made when it adopted an Act respecting Access to documents held by public bodies and the Protection of personal information in June, 1982. I will devote most of my time to highlighting the essential characteristics of our law in the Data Protection field, after which I will mention one or two of the strategic options facing the body responsible for supervising the implementation of the act, the Quebec Access to Information Commission, of which I am privileged to be a member.

There therefore won't be much in the way of nuts and bolts of individual cases in this talk. However, on July

1st, when the main provisions of our law come into force, we will deal with the individual problems and cases which arise according to the principles and procedures established by the law. In this sense, my presentation is practical. I am talking about rights and obligations embodied, since June, 1982, in legal and institutional machinery. Since Quebec is so far the only Canadian province to have full-fledged data protection legislation, I believe that this exercise may be worthwhile to others who are considering what type of machinery to adopt.

The Access Law

I will be referring to the Quebec law by its short title as the Access Law. Despite this somewhat confusing nomenclature, the part of the law which concerns us today is essentially a Fair Information Practices Act. It shares a number of features with all such acts. First of all, it states that nominative, that is personal, information is confidential unless the person the information concerns authorizes its disclosure.

As corollaries to this principle the Access Law requires that only necessary personal information be collected, that the agency representative who collects the information inform the person concerned or data subject of the purpose for which it is being collected and to

* Mrs. Pestieau was appointed in December, 1982 as a Commissioner on the Commission of Access to Information, Quebec. She is responsible for the Commission's Montreal Office. As a member of the Pare Commission into Citizen Access to Government Information and Protection of Personal Data, which submitted its report Information and Liberty in May, 1981, Mrs. Pestieau was already familiar with many of the issues which the Commission will be addressing.

She was educated at Oxford University (M.A. Modern History), L'Université Catholique de Louvain (B.A. Philosophy) and McGill University (M.A., Economics).

whom it will be released. The collecting or holding agency is responsible for the accuracy of the information it holds and for its destruction when it is no longer needed. The data subject has free access to his/her personal data file. He/she can request corrections if the information on file is inaccurate, incomplete or equivocal or if the collection was illegal. In all such instances the burden of proof rests with the agency.

What is special about Quebec's Data Protection Law? In opting for certain mechanisms, principles and procedures, rather than for others, the Quebec lawmakers moulded the law in a particular way. I should like to review five of its principal characteristics with you: the legal context, the law's coverage, its attitude to Government as a repository of personal data, its creation of a supervisory commission and its detailed nature.

The legal context

The Quebec law guarantees both freedom of information and data protection in one act. Freedom of information and privacy are the subjects of chapters II and III respectively, while the general provisions of the other chapters apply to both these rights. All three Commissioners are responsible collectively and individually for both sets of rights, although, as we shall see later, the Commission's mandate is wider in the case of data protection than in the case of access to administrative documents. There should therefore be no downgrading of one set of rights with respect to the other.

The Access Law is a fundamental law which takes precedence over all subsequent legislation unless a new law expressly states that it applies notwithstanding the Access Law. One of the Commission's tasks is to examine existing legislative provisions which are inconsistent with the Access Law and recommend amendments in one law or in the other. In the absence of harmonizing amendments, inconsistent provisions are automatically suspended three years after proclamation of the Access Law, that is to say, in October, 1986.

The Access Law also has its own sunset clause. Five years after its proclamation, the Quebec Access to Information Commission has to report to the Government on the way in which it has been working and on the advisability of maintaining or amending it. The Government tables this report in the National Assembly which decides on the law's future within the following year.

Coverage

The Quebec Law only applies to the public sector but it gives that sector a very wide extension. Whereas the federal law applies to about 130 agencies, the Access Law covers about 3,600, including towns and cities, school boards, hospitals, universities and crown corporations.

These agencies cannot ignore the law since in each the person exercising the highest authority automatically becomes the access and privacy coordinator unless he/she delegates this responsibility to another management person. Although the law does not cover the private sector, it does regulate the flow of personal data between public and private agencies. For the sake of completeness, I should also mention that the Access Law applies to both manual and automatically processed files.

A particular characteristic of the Quebec Access Law is its coverage of so called "confidential" files. The Government can authorize the setting up (or the continuation) of a confidential file by an order-in-council specifying the kind of information to be filed, the use to which it is to be put, security and conservation measures to be taken and the categories of people having access to it. Before making or amending such an order, the Government has to obtain the opinion of the Commission and the order itself and the opinion are tabled in the National Assembly.

Naturally, the people concerned do not have access to their records in confidential files, but the Commissioners do. They can investigate a confidential file to determine whether or not the personal information it contains was entered and used in accordance with the order tabled by the Government.

Government as a repository of personal information

Under this heading, I should like to say a few words about the way in which the Access Law considers public bodies as recipients and repositories of citizens' personal data. It is clear from the law that a citizen who provides information to a public agency, usually as a condition for receiving a service, does not yield it up to a monolithic Administration which can use it in whichever branch of its activities it pleases.

Data is collected by one of the three thousand six hundred departments, hospitals, crown corporations or other bodies not by the Government of Quebec. Thus data collected by a particular hospital is not necessarily available to the Department of Health, data on eligibility for welfare is not automatically available to educational officials screening bursary applications and so on. One agency can only release data to another under a written agreement tabled in the National Assembly to which the Commission's evaluation of the proposed transfer is annexed.

Thus everyone can find out to whom the agency which originally collected his/her data may be releasing it.

The Access to Information Commission

I now come to the fourth and one of the most important characteristics of the Quebec Access Law - its creation of a special agency to supervise implementation of the law. In contrast to the situation in the United States where citizens themselves have to take legal action if their freedom of information and protection of privacy rights are not respected, Quebec has set up a three-member commission to make sure that the new rights it has accorded are respected.

The Commission is a hybrid body with tasks akin to those of an administrative tribunal, a regulatory agency and an advisory body. Acting as a tribunal, its first duty is to hear requests for review of administrative de-

cisions regarding access to public documents and access to personal data files, as well as requests for the correction of such files by the persons they concern.

The Commission's decisions on questions of fact within its competence are final and it can issue a binding order: "to release a document or part of a document, refrain from doing so, correct, complete, clarify, update or delete any nominative information, or discontinue the use or the release of nominative information".

While its duties on the freedom of information side are essentially limited to reviewing agency decisions, the Commission also acts as a supervising body in dealing with personal data. Agencies have to declare all their data files to the Commission which draws up the declaration form. The Commission draws on these declarations to publish and update an index of all personal information files maintained by public sector agencies. It is responsible for authorizing the release of personal data for research purposes and has various other administrative functions.

The Commission's third major task is to give the Government its opinion on a number of questions, the most important of which have already been mentioned - data linkage agreements for the transfer of personal information between agencies and the creation or modification of confidential files. With respect to the former, it is worth mentioning that the Access Law does not set out principles to guide inter-agency data exchanges, such as routine or compatible use, so the Commission has had to develop its own thinking in offering advice on proposed inter-agency data releases.

The members of the Commission are appointed by the National Assembly for a five-year term of office and can only be dismissed by a two-thirds majority of the Assembly. Their annual reports, and any special reports they feel the need to present on non-compliance with the act, are examined by the Assembly within a statutory time period. The Commission's independence vis-a-vis the ad-

administration in general is thus based on its relationship with the Legislature. The law does allow the Government to use an executive veto against an access decision of the Commission, in which case the Commission will have to rely on the credibility it has established with the media and public opinion to maintain its independence. This veto, however, mainly applies to the freedom of information part of the law. Apart from a possible application to a data subject's access to his/her file, the Commission's powers in the data protection area are unaffected by this form of executive control.

The Access Law's precision

The last characteristic I want to discuss with you is a qualitative one that I have not been able to put a name to. It concerns the degree of elaboration in the Access Law.

Quebec lawmakers obviously wanted to avoid problems which had arisen in other countries as a result of administrative inertia or of imprecise drafting. As a result they included a number of detailed requirements some of which go further than those in most other data protection legislation.

One example is an agency's obligation to record each non-routine consultation of a personal record file and to make this record available to the data subject. This in turn leads to a definition of types of employees who may consult the file on a routine as opposed to a non-routine basis. In their determination to avoid the ambiguities which have cropped up elsewhere, the authors tried to plug all the loopholes and as a result have produced an elaborate set of rights and obligations.

On the one hand this makes the work of the Commission easier. Many of the problems which would have inevitably surfaced sooner or later are already identified and can be worked on. On the other hand, there is a danger of the Access Law giving rise to an arcane bureaucratic set of procedures which lose contact with the fundamentals of data protection. The members of the

Commission are well aware of this danger and intend to avoid getting bogged down in bureaucratic hassles while using the detailed provisions of the law to their best advantage.

Strategic choices facing the Commission

I have just mentioned one important choice in referring to the Commission's determination to prevent the freedom of information and data protection procedures from becoming overly bureaucratized.

I would like to conclude by raising two other questions which are among the many that the Commission will have to address as it carries out its mandate.

The first concerns the right balance between concentrating on responding to individual citizens' requests regarding their own personal files - access, correction, conservation, etc. - and allocating resources to auditing agency files in order to insure compliance with the law.

The two activities are obviously closely interconnected. Individual requests may signal the need for an audit, while an efficient audit will act as a preventive measure eliminating abuses about which citizens might have complained. While there is no question whatsoever of downgrading citizens' requests, experience elsewhere has shown that these are often insufficient to insure agency compliance which requires, in addition, active encouragement and monitoring.

A second strategic option is that of the Commission's stance vis-a-vis agency file holders. When not acting as an administrative tribunal, the Commission could choose to work with the file holders in the agencies in developing acceptable standards for collecting and managing personal information as the German Federal Commission appears to have done. Or it could keep its distance in policing personal data processing according to the principles of the law.

Obviously there can be no hard and fast, a priori, answers to either of these questions. I have mentioned them in order to share with you some of the challenges a law such as the Access Law, which creates new rights, obligations and institutions, inevitably sets for those who have to oversee its implementation.

The Access to Information Commission is at the moment a hive of reflection and activity in preparation for the proclamation of the main articles of the law on July 1st. In the course of responding to the diverse situations which will arise, we hope to make the choices most appropriate to the law's objectives which are to insure freedom of information and protection of personal data without depriving Quebecers of a responsible and efficient administration.

DOUGLAS D. SMITH *

Assistant Deputy Minister
Communications Policy Branch, Department of Justice
Province of Saskatchewan

Privacy is not the issue that we are dealing with here at this Conference. The electronic age has taken us far beyond the point of the old notions of privacy. People today have to adopt new attitudes towards this subject; we have to think in terms of new forms of privacy.

It is a given that files are held on us; on any one of us who has ever applied for a mortgage, for a Visa card, visited a doctor, opened a bank account, or applied for any one of a thousand credit cards that are available. For the convenience of getting access to credit, we have wittingly - or unwittingly - forfeited our privacy.

For the speed and the convenience of pulling money out of walls when banks are closed, we have made ourselves naked. There are those among us - the civil libertarians - who would have us return to the dark ages, who would have us believe that it is wrong that people can collect information on us. But you know, absolute privacy is a fairly modern notion. It did not exist in the Greek City State, and it did not, and still does not, exist in communities of 500. Information about people living in small communities is very public.

However, what disturbs people today is the enormous amounts of information

that can be stored about them, the kinds of information, the possible mis-use of that information.

And this is what this Conference is all about. Not privacy, but the mis-use of information. This is the real issue. I personally do not mind people collecting information on me, but I ask them not to use it against me maliciously. The question we should seek answers to is: "Are there ways of controlling the mis-use of this information? How can we make the collectors of information accountable?"

And, the issue is not new. Shakespeare in Othello said:

"Who steals my purse, steals trash; tis something, nothing; t'was mine, tis his, and has been slave to thousands; but he that filches from me my good name, robs me of that which not enriches him, and makes me poor indeed".

Now then, I am sure they did not have computers in Shakespeare's time, but he too was seized with this problem as we are in Saskatchewan. My Minister, The Honourable J. Gary Lane, is responsible for the publicly-owned telephone company, and is responsible for SaskComp, the largest computer installation in our Province.

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My Minister, my Government, has a very real interest in ensuring that the telephone company system is not mis-used by those who would transport information across the system. But, at the same time, this concern is tempered by the knowledge that too strict legislation or severe conditions on users could stifle initiative to introduce the myriad of new telecommunications services now here and on the horizon.

We have, as many of you may know, the longest fibre optic system in use anywhere in the world in Saskatchewan. It has tremendous capacity, and tremendous capability for two-day interactive data. We have also in the past couple of years been gaining invaluable experience from information systems such as the Pathfinder Trial, and the Agritex service now in use.

The experience gained from the Pathfinder project has assisted information vendors and SaskTel in developing a more sophisticated videotex arrangement. This will allow subscribers who have the appropriate equipment to access information from one of several potential data bases that are located in remote and independent locations. This is possible because SaskTel now owns and operates a gateway computer that both facilitates uniting users to the data base they require and accommodates the necessary billing process. The gateway service which SaskTel offers is the first such commercial gateway of its kind in North America. The service is called Agritex and the data bases that are available through it are available through one of the two protocols.

What are the implications of these technologies and services to the public? The first important implication is that our telecommunications services allow business people and residents of Saskatchewan to conduct their business internationally, nationally and locally from their place of business or home. International markets and contacts can be accessed easily and large quantities of information can be exchanged efficiently.

Second, the new technologies create a

vista of new economic opportunities. The information industry that I alluded to earlier is one that is being encouraged by the Government of Saskatchewan. It offers opportunities in both software - the knowledge and information necessary to operate or use the new technologies - and hardware, the equipment itself. Advancements in technology, however, frequently are accompanied by social concerns. The technologies that allow us to process and exchange information over great distances bring with them concerns for individuals and our right to control information about ourselves.

You will appreciate from earlier remarks about advances that have been made in communications technologies in Saskatchewan, that the issue of personal information brought about by the new technologies is a reality not a hypothetical situation. Accordingly, the Government of Saskatchewan appreciates that this is an important issue and one that requires effective attention. This appreciation is reinforced in the Province because SaskTel, the Province's Telco, is, as I already mentioned, owned and regulated by the Province.

This means that Government can ill afford to have advertisers or information vendors compromise the public. It would seem, therefore, that protection of an individual's rights will require some form of public sector intervention by governments.

The concern over the issue of information is more widespread than I have suggested to this point. The Europeans have recognized, acknowledged and taken measures to protect all individuals' rights. The Council of Europe and the EEC have co-operated to develop a set of principles that are intended to guide countries in the preparation of legislation. A European Convention respecting privacy has been passed: participating countries ratified the Convention by passing legislation.

Great Britain is one country that is in the process of passing privacy legislation. This legislation, which we will be hearing more about tomorrow from the Honourable David Waddington, Minister of State for the Home Office:

"...will establish a Data Protection registrar, who will maintain a register of personal data users and computer bureaux and powers to ensure that data are used in accordance with (certain) general principles...;

-sets up an Appeal Network for data users; and

-gives data subjects certain legal rights, including a right of access to their personal data and in certain circumstances a right to compensation."

It would seem that the onus for intervention by government is strongly emphasized when environmental concerns and issues like privacy become too large for the individual to control himself. But is there another side to issues of this nature that needs to be taken into consideration to balance public sector intervention?

Consider, for example, benefits that are derived from advances in computing and communications technologies. Consider also, the vendors of these services. Public sector intervention should not deprive society of benefits or smother enterprise but instead should seek to create a climate and framework to foster the good and obliterate the evil. Can legislation, such as that which the British Government is introducing, achieve this?

Private sector interests that are represented by organizations like the CCTA and fledgling information companies can be anticipated to argue that legislation or regulation will impair their ability to provide the type of service the public wishes at a reasonable price. Public sector intervention, particularly legislation, frequently is perceived by such organizations to be burdensome, expensive and a threat to the information industry. This, however, need not be the case. Legislation can assist both the public and information vendors. How can this be, particularly with an industry such as the information industry that employs such novel technologies like videotex?

The proposed British legislation which I cited a few moments ago and which we will be hearing more about tomorrow, has the potential to protect the public interest and to help foster an information industry. The registry concept and associated regulations on which it is based, facilitates the public interest by establishing the rules of the game and the sanctions for non-compliance.

Information companies operating within the framework of the legislation effectively will be accommodating privacy concerns as defined by publicly responsible legislators. The public, consequently, will perceive these companies to be law abiding and thus worthy of its trust. This perception is important to information vendors because it is unlikely that the public would patronize them if their integrity was suspect. Thus, legislation would afford a certain status to information vendors, and this status would have value in both moral and commercial terms.

Commercial interests could be further served by legislation that employs the registry concept. The agency of government that registers and polices information vendors could make the list of registered vendors available to patrons. Public attention thus would be directed to those companies that are known to government and who are subject to government sanctions if they do not conform to the legislation that protects the public interest. This too has commercial value and can help to foster the industry by ensuring that companies operating in it are honourable.

I believe that legislation which embraces the registry concept is worthy of our consideration and attention. Worthiness is an important concept to Saskatchewan legislators because government policy in Saskatchewan is directed toward reducing or precluding regulations or legislation that are not necessary. I believe that the case for legislation as it pertains to personal information is strong: I reiterate that the registry concept in legislation should be considered. But, how can this come about in a country with two senior levels of government and several jurisdictions?

The Europeans again have provided a model that we could follow in preparing such legislation. Earlier in my remarks, I alluded to the concept they have employed. This involved the relevant countries, or jurisdictions in our case, developing and agreeing to a set of principles that would establish the framework for legislation in each jurisdiction. Communications between those individuals charged with the responsibility for creating legislation in their respective countries helped to ensure compatibility and acceptability among countries that agreed to the set of principles.

This method of proceeding could accommodate the types of concerns that are evident in the respective levels and jurisdictions of government in Canada; each jurisdiction could have its unique circumstances accommodated without threatening the general intent of the agreed principles.

We in Canada are fortunate with respect to this issue in that a great deal of valuable work, principles, legislation and experience could be drawn from the Europeans. Furthermore, Canada itself has done a reasonable amount of work through the OECD. She has consulted with the provinces about the OECD guidelines and currently is deciding whether or not to adhere to them.

Clearly, the time of decision with respect to this issue is at hand. We have this excellent forum graciously organized by the Government of Ontario. I believe that we should avail ourselves of this opportunity to follow the European models, to use Canada's experience and to create a legislative mosaic to ensure that an individual's right is ensured at local, national and international levels. To this end, I would suggest that the levels of government and jurisdictions that are represented here establish a committee, the members of which would be charged with two responsibilities: (1) creation of a set of principles to guide the development of legislation in the respective jurisdictions, for which we have valuable information to help that process along, and (2) once the principles have been agreed to, co-ordinate the

development of legislation in the respective jurisdictions. I believe that legislation of the type I have described today will protect the public interest, help to foster the information industry and assist in improving international relations through a medium that can assist both social and economic well being.

Thank you.

PANEL 5: "PRIVACY: INITIATIVES FOR THE PRIVATE SECTOR"

CHAIRMAN: Ed. Finn *

PANELISTS: W.H. Loewen
Boris Mather
Maryon Brechin

* Mr. Finn, a journalist for fifteen years and formerly public relations consultant to the Canadian Labour Congress and Public Relations Director at the Canadian Brotherhood of Railway, Transport and General Workers, is presently employed as a Senior Public Relations Officer to the Canadian Union of Public Employees.

W. H. LOEWEN *
President
Canadian Independent Computer Services Association
(C.I.C.S.)

It is difficult as a data processor to suggest specific initiatives in the area of privacy. I could come forth with a series of platitudes about how we should be self-regulating, how we should act responsibly or even explain the technology that we should be applying to help ensure privacy.

I don't believe any such statements will ever satisfy the public. I am even more certain that they will not serve the long term needs of the computer services industry.

The two major issues to be dealt with are access to data by the proper persons and no other, and secondly, the misuse of data by the party in possession of it.

I personally do not believe we can rely on self-regulation in either case.

- There will always be those who will abuse the regulations and their conduct will reflect on all businesses -- the responsible as well as the irresponsible.
- The cynical public will not be left comfortable in a self-regulated atmosphere. There may well be an attitude that the codes adopted are merely window dressing. Again, that attitude will apply to all data collectors.

- Self-regulation favours the least scrupulous operators because they may be able to put themselves in a position of competitive advantage by misusing or selling private information.
- Industry codes do not have the force of law and breaking them does not reflect on the individual company in the way that legal action would.

This is a legal problem that must be solved by the legal profession and our legislators. Persons holding private information should be viewed as holding that information in trust for the purpose for which it is provided and for no other purpose. Anyone who violates that trust should be subject to severe penalty. The full force of the justice system should be placed behind the enforcement of those penalties. No initiative on the part of the industry can fill that void. The public must understand that they are protected by the law.

There is a substantial part of the public that believes that what is not illegal is legal. Most of the hackers who try to break into systems will surely stop or be stopped by their elders when it is clear to all that misuse of data is an offense. The public will accept the storage of their information if they know that abusers, corporate or individual, can be prosecuted.

* Mr. Loewen is President and Founder of Comcheq Services Limited, a company formed to provide computerized payroll services for companies. He is a Chartered Accountant who has spent most of his career in industry in positions of Financial Management. He has been active in the computer services industry as a founding member of Canadian Independent Computer Services Association (C.I.C.S.) and is its current President (1983-84). He is also very active in his community and is a member of the Sustaining Fund Committee on the Winnipeg Symphony Orchestra.

determining how this can be done is beyond my competency. It is a problem for the lawyers.

What we in the computer services industry can do is warn legislators of problems that may be arising. This I will try to do now to the degree that I am able.

The potential for massive abuse is growing. The sequence of events and possible events relating to privacy in the area of banking provide examples.

Two or three years ago, the Royal Bank was caught searching its branches to find out where newly elected Member of Parliament, Cyril Keeper, did his banking. There was some indication that this was done with other MP's. The situation suggested that there might be a central depository of this sort of information on all MP's. Possibly similar searches could be made for other individuals. This was a clumsy effort. The Chairman of the Royal Bank explained that the bank merely wanted to be able to contact the MP, not being satisfied apparently with the methods available to the rest of us. That was not the inference taken by others when this act came to light.

There is a kind of intimidation of everyone when powerful institutions use information for reasons not directly related to the purpose for which it was obtained. Had the bank been a little more up-to-date in its procedures, it could have provided the appropriate officials with computer routines to search their files for the names of individuals that interested them. That way, the chances of such efforts as the Royal Bank engaged in would be less likely to come to light. Technology now permits such activity. The law should prohibit it.

The problem with banks is about to be aggravated many times over. Credit and debit cards are about to go on-line -- possibly world-wide. It will be quite a easy matter to follow, in real time, the activities of any card user. The potential here for snooping into other people's private lives, habits and activities is quite significant.

Industrial espionage could take on new dimensions as sleuths watch the movement of their prey from bar to airline to hotel. As we head for the cash-less society, will the person paying cash be viewed with suspicion -- as someone not wishing to leave a record of his whereabouts?

Our Manitoba Premier and a number of aides recently made a trip to Europe. The trip was surrounded by sufficient secrecy to ensure that it would be well publicized. Possibly he will come back with an announcement of some sort. With credit card transactions being handled on-line, his activities and possibly even the purpose of the trip could be discovered. This could provide advance information that would be of value to someone. How will such snooping be stopped? Possibly the examination of such transactions should be subject to the same restrictions as wire tapping.

Keep Data in Canada

The issue of transborder data flow involves privacy. How do we protect Canadian data when it is stored outside Canada?

An attempt to overcome this and other objections to transborder data flow has been proposed by the Royal Bank. Their approach is to enter into a treaty with the U.S. and possibly other countries that would ensure Canadian rights to data stored in the U.S. and vice versa. It is the implementation of an idea being expounded by some that calls for the "right of presence" of multinationals in the countries of their choice.

This is a very dangerous step. It is a back-door approach to giving multinationals greater access to business opportunities than, in this case, Canadians themselves have. It is obvious to anyone, that in the fast emerging computer-communication industry, there will be ten times as many applications developed in the U.S. as in Canada. It is not in the least that we are incapable of developing these applications. There are simply ten times more people working on the application in the U.S. than in Canada. Free access to the Canadian market via the telephone system

means that U.S. suppliers of services can treat Canada like another state of the union. This applies equally to systems provided by computer service companies and in-house systems provided by head offices to their subsidiaries.

This process complicates many decisions in Canada. It certainly complicates the privacy issue. It involves our sovereignty. Most importantly, it involves not just computer related jobs but management, clerical and other business services functions that will be performed where the information resides. The number of jobs could well be over 500,000 before the end of this decade. Let me give you an example of the apparent job loss.

The three largest automobile companies employed about 90,000 Canadians last year. Their U.S. parents employed nearly twice as many people to handle that volume of sales. The reason is, we believe, that not just the R & D jobs which we have come to expect to be performed outside our borders, but many other management related jobs can now be performed outside our borders. I invite you to check the employment levels of many U.S. multinationals operating in Canada and you will see that this is a general situation.

The answer to the privacy, sovereignty and employment issue is not a treaty with the U.S. that would paper-over these problems. The answer is to be found in the report of the Clyne Commission to the Minister of Communications who was then the Hon. Jeanne Sauve. Their recommendation was that Canadian data should be processed in Canada.

In what may turn out to be the greatest betrayal of Canadian interests in history, the Department of Communications has, instead, allowed the installations of facility after facility that is put in place for one purpose only -- the conducting of Canadian business from outside Canada.

The computer services industry can and will fight for the processing of Canadian data in Canada. We need the support of all Canadians who are con-

cerned about our privacy and the level of unemployment in Canada.

A final area for concern has to do with satellites as they begin to be used for data and communications. That data rains on all of us. Are there safeguards to ensure that it is not interpreted by the wrong party?

In conclusion let me say that we need legislation that will ensure that information we provide as individuals must only be used by that recipient for the purpose for which it was provided. Violators of that trust should be subject to the same penalties that any other breach of trust would attract. The potential penalties should be very severe because the potential abuses are great. I have no fear of such penalties. I don't think other responsible holders of private information would have any fear either. It does not detract from the establishment of standards if an industry chooses to do so.

This does not appear to me to be difficult law nor difficult to administer. By using the principles already well understood and supported by precedents, both industry and the public can enjoy the benefits of new technology without unnecessary concerns.

ABSTRACT: FREEDOM TO ACT: TRADE UNIONS' CONCERNS WITH PRIVACY OF THE CITIZEN

BORIS MATHER *

Chairman

Canadian Federation of Communications Workers

These remarks outline three principal areas where unions are particularly concerned about invasions of the privacy of their members. Such privacy violations are not only demeaning and dehumanizing; they inhibit members' ability to act as free citizens, freely expressing their opinions and freely exercising their right of assembly and action as unionists.

The first concern is that employers often have access to personal information which could be used against a member in his or her employment situation. This has happened with inadvertent complicity by government. For example, in the 1950's communications installers employed by Northern Electric had information given in federal government security clearance procedures used by company personnel officers.

A more recent example is the casual way in which the Evalulife questionnaire of Health and Welfare Canada was circulated at BC Telephone in 1983. The union objection was not only to the availability of the material to management but the very questions themselves. We object to a government file, of whatever department, having answers to questions such as "Has anyone in your family ever committed suicide?" and "When did you begin regular sexual relations?" We consider that whole scheme to be an outrageous invasion of privacy and have advised our members not to cooperate with it.

Our second concern is with government accumulation of personal data on citizens. Unions by their nature are anti-status-quo and outside the Establishment, in Canada and Poland, El Salvador and South Africa. Police surveillance is a problem for union activists everywhere. We always and everywhere oppose the extension of secret police powers. Therefore we oppose the current federal security agency bill.

Third, we oppose electronic and auditory surveillance of our members. This is standard practice in telephone companies but we have never accepted it and we are still striving to eliminate it.

These are the three primary privacy concerns of the members I represent - unauthorized use of personal information, state snooping, and surveillance. We intend to continue to struggle against such abuses of civil rights.

* Mr. Mather has been active in unions for many years. Prior to 1973 he was Canadian Director of the Communications Workers of America (AFL-CIO). He is currently Chairman of the Canadian Federation of Communications Workers, a 50,000 member Federation consisting of three Canadian Trade Unions: Canadian Office Employees Union, Communications Workers of Canada (CLC) and Telecommunications Workers Union (CLC).

*
MARYON BRECHIN
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Thank you very much, Mr. Chairman. Good afternoon. It is a little daunting to be asked to talk on the subject of consumer initiatives in privacy on the afternoon of a day which has brought forward so many perspectives on privacy, most of them with some reference to computers or communications technology. Undoubtedly, everything I say will already have been said in some fashion by someone else. But hopefully, privacy as consumers see it, may present some unique facets since it's basically personal privacy which concerns them most.

If I might take a minute to explain C.A.C., (Consumers' Association of Canada for those of you who aren't yet members) it's Canada's only voluntary consumers' association. It was established in 1947 as an offshoot of the Wartime Prices and Trade Board and now, with 160,000 members, it has several roles. We publish two magazines monthly, the Canadian Consumer and le Consumer Canadienne and we operate the laboratory which tests consumer products reported in the magazine. Since 1973 we have represented consumers before regulatory tribunals through our regulated industries program but the Association's greatest strength still is in the thousands of volunteers who are organized locally, provincially and at the national level - volunteers who provide information and assistance to consumers and present consumers' views and their problems to industry and government.

Our association first became concerned with the invasion of privacy in the 1960s when a flood of unsolicited credit cards deluged our mailboxes. The theft of these and their unauthorized use rose very high on the list of problems brought to the attention of our volunteers. But unwise authorized use of the new plastic money made some consumers aware for the first time of the Credit Reporting Bureau, which they discovered could have a very great impact on their lives even without any knowledge of their existence. Information, and more dangerously, misinformation could be held about consumers and dispensed freely. So the issue of privacy began to come to the fore.

We were aided by the work of the Law Reform Commissions in several countries and the consumer movement began to learn what information about an individual might be held and how it could be used. We made the shocking discovery that, although as far back as 1980 when two Harvard graduates whose names are very familiar now - Warren and Brandeis - began to argue strongly for what they called the right to be left alone, still, in the 1960s Canadian law offered no specific protection for this very precious concept. This is perhaps understandable in the light of the difficulty we have even today in defining privacy.

Although it is a jealously guarded concept, consumers have widely differing ideas of privacy and of the weighting

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they accord its various aspects. Each one of us has a core of certain matters which we deem so intimately ours that we have a right to exclude others, if we desire to do so. The prime requirement is perhaps that we, ourselves, retain control over what information is available to whom, at what time and in what form. Scott Gardiner, in his examination of the subject, suggests that it is the loss of personal autonomy or control that is of greatest concern, and that we need to determine an acceptable balance point between total loss of autonomy and a world of full self-disclosure. Whatever degree of personal rights are found acceptable, they should be equitable for all members of society and they should be so well understood that no one feels threatened.

The threat to privacy which was posed by Credit Reporting Bureaus and credit cards was a very interesting project for our Association. Volunteers researched out the Credit Reporting Bureaus in their areas and attempted to obtain access to their credit files. Some of them were denied and some of them found they didn't have any - they happened to be married. Their credit reports were in their husbands' names. Their reports to the Association added to the pressure which was brought to bear on governments to enact legislation which would govern the types of information which could be held, for how long, the provisions for informing the consumer when a negative report had been given, and the opportunity to examine and correct if necessary the information held. This pressure resulted in the passage, in most provinces, of credit reporting legislation, with which we are all familiar, and which embodied some of all of these provisions.

Then came the computer with its attendant data banks and host of link technologies, all to them with the potential to increase exponentially the threat to our personal privacy. In a number of surveys on these new technologies conducted by C.A.C., privacy protection has consistently been rated as the top three of the concerns of consumers.

In 1973 an Association's resolution first requested legislation to protect the privacy of individuals. What is consumers' prime concern? Perhaps on the broadest basis it is with the security of the information held. As we have seen, the concept of privacy doesn't exist in English Common Law although confidentially does, as in contracts. Some provinces make the violation of privacy actionable, without proof of damage, but there is still no federal statute which defines theft of information as a crime, although our Association has for some years requested that the Criminal Code be amended for this purpose. At the federal level, wire tap legislation forbids the interception of voice or electronic messages without a judicial order and there are provisions regarding the release of data collected under the Income Tax and StatsCan Act, for two.

It is a small wonder that consumers are nervous about the safety of information about them even now held in data banks, and this concern increases when they learn that many of these banks are outside Canada and are not even subject to our minimum laws on the subject. The security of data collected through the use of the new technology is virtually still unaddressed. Some provinces have data based leakage provisions but no redress is available for breach of duty in data bank disclosure. Nor is there any legislation to limit the length of time information can be held on a person.

C.A.C. has recently become aware that existing credit reporting legislation can be bypassed by consumers when a request for an American Express credit card was denied a young man. He found out, after a great deal of searching, that clients of credit reporting agencies can use their identification number in computers to call up the file. There would be no negative reports given, the whole file just spills out and the consumer is never notified, has no opportunity to correct an error. This appears to be a technology-developed loophole which requires repair.

Computer-based technology is providing more than loopholes. Electronic data processing and advanced telecommunications systems together have removed most of the physical impediments to information collection and dissemination. Their capacity to collect, to store and most importantly, to correlate information about consumers is awesome, and it's rapidly growing. There is no doubt that the ability to amass and correlate data represents power in the hands of those who hold it, and consumers are correct in regarding it as a very real threat to privacy and individual autonomy.

The security of financial information may be slightly better covered but there is still no legal or legislative definition of an individual's right to obtain access to personal information held by financial institutions in order to verify or correct it. In addition, consumers are now nervous about the changes which concentrate information about them in a central data bank instead of spread out in their local branch banks and credit unions. Banks tell us that they have safeguards but I don't think any one of us has not had to deal with computer breakdowns when we go to make a deposit or withdrawal and that scarcely leads us to have confidence in the system. And engineers tell us that there is no failsafe system. In the words of one, what the mind of man can devise, another can break.

Another facet that concerns us is that computer students often practice means of entry into data systems as part of their training. C.A.C. has expressed its concern that the moral issues posed by this practice are inadequately dealt with by our colleges and universities.

The introduction of point of sale systems can also pose a threat for unauthorized access and use of information. C.A.C. volunteers have been working with P.A.C.E. (Payments Alternative Communication Exchange), and I think all of you heard about P.A.C.E. at the last session. We've been working on the development of what we hope might be a self-regulatory practice for such systems. The debit card which they

will use will require much more sophisticated safeguards than credit cards which we now use since the computer can't match signatures. But we're concerned that industry seems to be dragging its feet a bit in the development of voice or thumbprint or some other method of identification. Perhaps, because as presently planned, debit cards shift the burden of unauthorized use to the consumer.

P.O.S. systems will generate masses of information about our habits which have great value to industry and over which we have no control. Our only safety appears to lie in not using the system. The only answer may be legislation, for the compilation and analysis of this data can be far more injurious to consumers than the practices which have caused us so much concern in the past - the sale of subscriber lists to mailing industries (the junk mail syndrome), telephone solicitations and even now the telephone solicitations come by computer to consumers (we hear a computer voice on the phone asking us questions and asking for our support), and also the blacklists of names of people which have been prepared and sold to landlords, insurers, and others.

Perhaps the most information-hungry invader of our privacy is government itself. We just have to look at the federal Statistics Act, for one, and I think some of us can still recall when the Prime Minister, Lester Pearson, was asked whether the S.I.N. number would ever be used for other than social assistance programs. And his answer "certainly not", must be the most ironic assurance we've ever had in Canadian history because so widespread is the use of the S.I.N. number now that the C.A.C. in 1979 requested government to provide adequate safeguards for the protection of the privacy of individuals in any system using S.I.N. number and we also adopted an Association policy of alerting consumers to the dangers of the indiscriminate use of this number.

Unfortunately, not all consumers realize how prevalent is the collection of information today. Then Privacy Commissioner, Inger Hansen, found two

years ago in a study that many consumers do not even realize that they can refuse to divulge personal information. A much more focussed effort will be necessary to alert consumers to the need to give the bare minimum of information required. However, restriction of the use of personal information to the purpose for which it was collected may require legislation similar to that in effect in Sweden. This legislation would require zealous application and monitoring to be effective, perhaps through licensing requirements as are used in some European countries. This suggestion was made by the Association in a brief to the Committee on Computer Crime.

But what of redress for the injured consumer? Even if the Criminal Code is amended and the right to privacy enshrined in the Charter of Rights and Freedoms, as our Association has recommended, it will still be costly to bring a case before the courts. Under the Privacy Act the Commissioner can appeal for a citizen against the federal government and its agencies. Do we require provincial privacy ombudsmen to assist consumers against the omnipresent data banks in the private as well as the public sector? C.A.C. has also recommended periodic public reviews of computer security in both sectors, the development of standards for security, mechanisms for monitoring and compliance with these standards.

This has necessarily been a broad brush and, I hope short, impression of the privacy issue as consumers in Canada have identified it to our Association and of some of the initiatives we have taken on this issue. With the new technologies developing at such a rapid pace, it is imperative that Canada develop a legislative framework to ensure that the consumer's need to retain control over personal information is assured; that legislation is established to assure easily accessible methods of redress if privacy is violated, and

that Canadians be made aware of their responsibilities and their rights in this field. We applaud the initiative of the Ontario Government in providing this forum on the issue. We hope it will lead to effective computer crime standards and legislation such as are necessary to provide protection which is vital to consumers in this information society.

Thank you.

PANEL 6: "TRANSBORDER DATA FLOW: TOWARD A
RESOLUTION FOR THE FUTURE:
THE TRENDS, THE ISSUES"

CHAIRMAN: Russell Pipe *

PANELISTS: Professor Thomas L. McPhail

Jan Fedorowicz

Jim Grant

COMMENTATOR: Peter Robinson **

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TRANSBORDER DATA FLOW (TBDF) AND THE CONTINENTAL COMMUNICATION PACT (CCP): THE RATIONALE FOR A COMMUNICATION PACT

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This paper deals with the issue of transborder data flow (TBDF)¹ with an eye toward the future. Essentially the paper reviews the major concerns with TBDF including the three most salient themes, privacy, employment and sovereignty. The paper then continues to elaborate on three potential scenarios in terms of future trends and concludes with a detailed discussion of the third scenario, the Continental Communication Pact (CCP). The CCP is a proposal for a bilateral sectoral informatics pact with the U.S. that will both maximize the benefits to Canada as an information based economy as well as recognize the natural communication interconnection with the U.S. marketplace.

Introduction:

In the later 1960's and early '70's, the issue of privacy and computers was considered a "hot topic". In fact, as part of the Canadian Telecommission studies there were a series of privacy related papers that were produced jointly by the Federal Department of Communications and the Federal Department of Justice; yet, little legislative action resulted, but at least the studies indicated an early willingness to examine the issue in terms of other countries', mostly European, initial

concerns of privacy and computers. In turn, during the 1970's many of the non-economic concerns about computers were viewed through the prism of privacy.

But, in the mid 1970's, the debate shifted from privacy to freedom of information issues and access laws resulting from legislative action in various Western nations, particularly the U.S. Now once again, the issue has shifted from these areas to a more broadly based concern about "informatics". Informatics is the marriage of computers and telecommunications in such a way as to produce a blurring of traditional processes and procedures with regards to the storage and access to a multitude of data bases, particularly those controlled by transnational corporations (TNC's).

The means of affecting TBDF may be a consequence of either legislative action, such as Brazil (to be detailed later), or non-legislative action, such as economic barriers, that have the net effect of altering the flow of computerized information and access to computerized data bases. Further examples of non-legislative actions include tariffs, discriminating pricing, idiosyncratic technical standards, import quotas or government subsidies.

Tom McPhail is a Professor of Communications and Director of the Graduate Programme in Communications Studies at the University of Calgary. He has worked for the Federal Department of Communications as policy advisor and consultant (1968-1972), worked on the first interactive cable project in North America with the TRE Corporation in Washington, D.C., and acted as a senior consultant to UNESCO in Paris in the late 1970's. He has presented over 80 research papers dealing with different facets of communications and has published with Sage Publications: Electronic Colonialism: The Future of International Broadcasting and Communication.

Of interest to this Conference is the fact that privacy is now re-emerging as a major issue, not based on traditional concepts, but rather, based upon two new concerns. In this respect privacy has been "born-again" in the TBDF debate.

The first is the introduction of a large scale of private carriers that are now holding individually identifiable information, firms that are referred to as "value added" or "carriers carrier". These satellite services, either through potential competitors to Telesat, COMSAT or Intelsat, or through I.B.M.'s SBS, are collectively representing a quantum increase in the movement toward essentially non-regulated, or minimally regulated, private TNC communicating carriers.

The second development is the continuing increase, estimated 20% a year, of on-line data bases available from a diverse range of information providers and processors, including governments, businesses, and research institutes. Not only are these data bases increasing in actual numbers, but also the ability to move the data electronically between systems in diverse nation states is increasing in parallel. Although I will not deal with it here, clearly the examination of these issues by the Commission of the European Communities, plus the OECD, provide ample evidence of the European communities' concerns with the informatics and privacy.²

It is significant to note that European states place greater importance on privacy and national sovereignty along with other social-cultural and non-economic concerns. Solely economic or technical considerations are lower on the agenda for these nation states. To a considerable extent, the Canadian situation and public policy approach to informatics is closer to the European view rather than the U.S. view.

One could argue that in terms of the United States that national sovereignty has not been a major concern for them since they control most of the major actors in the informatics fields. Indeed their sovereignty is being

enhanced by the computer revolution. Also to blindly pursue the U.S.'s deregulation strategies in the area of informatics is not in the public interest from a Canadian perspective. I will come back to this later.

The concept of non-economic concerns involving TBDF is reflected in the issue of protection of privacy; particularly concerning information about individuals that has been stored in or is accessible by foreign-based computer systems. Personal files may contain a wide range of information about an individual's financial, economic, educational, welfare, business and insurance status, medical or criminal history, and political and religious beliefs. The increase and ease of TBDF heightens the concern that foreign governments, corporations or persons, may have access to this personal information. Recipients of data may have the information before the ultimate users do. Loss of control over information introduces new complexities regarding data security.

Economics & Employment

Another related concern of even more importance to Canada is the implications of TBDF on the economy of our country. A major concern is that employment opportunities are being lost, mainly because the commercial data processing is taking place in the U.S. where multi-national computer firms have their head offices. In 1978 a survey of 400 Canadian subsidiaries of U.S. companies estimated that from \$300 to \$350 million of computing services were imported from U.S. parent companies, and this amount was forecast to increase to \$1.5 billion by 1985.

It is difficult to make accurate predictions on the composition of future employment as pertinent factors which should be examined are subject to economic vagaries on a world scale (i.e. economic growth, political unrest, labour force demographics, foreign trade movements, technological breakthroughs, or decisions of TNC's).

Real employment growth refers only to new jobs added -- not job openings. The

projected job expansion has led to the common false assumption that aggregate job growth will be biased toward high technology occupations. Creation of most jobs between 1983-1990 will lie in service related sectors with few being related to high technology sectors. Economic growth will favour middle and low level occupations with clerical and service occupations accounting for up to 40% of the employment growth.

Workers in many professions will constantly find their jobs altered by sophisticated computer technologies. Examples of this phenomenon are the increasing utilization of word processors by secretaries, bookkeepers use of computerized financial spread-sheets, the growing implementation of computerized record systems by purchasing and inventory clerks, mechanics use of diagnostic mini-computers and computerized directories employed by telephone operators.

Much automated equipment is currently paced and controlled according to centralized decisions made by managers located in the office, away from the production site. This also allows TNC's to extend and centralize their decision making procedures.

But, despite widespread automation, aggregate skill requirements have changed very little over the last two decades. Automation tends to require less operator skill after certain levels of mechanization are achieved, thus reducing skill requirements. This deskilling phenomenon is evident in the computer technology industry itself. Early computers were large and expensive, manned by programmers and operators with complex skills. As the technology evolved, the tasks and skills involved also changed.

Analysts performed the more creative, skilled tasks while programmers and coders were assigned to more tedious and routine functions. Programming became easier with the advancement of user-friendly, menu prompted packages. The new generation of office computers are designed so that knowledge of computer languages or special computer skills are no longer essential.

Office computers currently perform tasks formerly executed by secretaries, emphasizing the reduction of requisite skills needed to perform this type of office work. Word processors correct typing errors and spelling mistakes. As more advanced software is developed highly trained skilled workers will be in less demand.

A Stanford study by Levine & Rumberger in February, 1983 states:

In addition to this "deskilling" effect it is possible "that entire classes of skilled workers will disappear or be severely reduced in numbers as their jobs are replaced by robots or computer software." For example, the draftsman could easily be replaced in the not-too-distant future by widespread use of computer-aided design (CAD).

Given that most new jobs will not require higher skill levels and the probable deskilling of many existing occupations, the authors identified three appropriate education policies for the future.

The Stanford study continues:

First, the general educational requirements for creating good citizens and productive workers are not likely to be altered significantly by high technology. Everyone should acquire strong analytic, expressive, communicative and computational skills as well as extensive knowledge of political, economic, social and cultural institutions.

Second, since it is not possible to predict the types of jobs available and selected, and the changes in jobs over a forty-year working life, general academic and vocational preparation should be stressed over specific training. Until the turn of the century, three of the five fastest growing occupations will be: data processing machine mechanics, computer systems analysts, and computer operators and they deal with high-technology products. Employment in these five occupations is projected to increase by over 100 per cent, more than four times the overall employment growth rate.

However, slower growing occupations with a large employment base are expected to contribute far more jobs to the economy than high-technology occupations. In fact, the five occupations expected to produce the most new jobs are all in low-skilled areas: janitors, nurses' aides, sales clerks, cashiers and waiters/waitresses. For example, while 200,000 new jobs for computer systems analysts will be produced in the U.S. between 1978 and 1990, over 600,000 new jobs will be created for janitors. Although employment in high-tech occupations will increase quickly in percentage terms, the contribution of these jobs to total employment growth will be small.

To put it bluntly, Canada has a vested interest in obtaining its reasonable share of computer related jobs, particularly in data processing, otherwise, as the Stanford Study indicates, we could, as a nation, wind up with a far greater and disproportionate share of the low-skilled variety of jobs.

Sovereignty

Canada has been investigating domestic communication issues for years. Yet the numerous reports and studies of public policy in all areas of communication have incited a minimum amount of action or sustained attention within the highest levels of our federal government.

One early report, Instant World: A Report on Telecommunications in Canada (1971) was compiled by a study group called "Telecomission". With the cooperation of government, industry, and university personnel, Honorable Eric Kierans, the first Canadian Federal Minister of Communications in 1969 organized a broad ranging study to examine the present and future issues in telecommunications, and to address accompanying social changes. A major observation from the study was that some Canadian information was being stored exclusively in U.S. data banks. At that time, the Canadian insurance industry relied on computerized information from Hartford, Conn. Canadian hardware-makers used a Columbus, Ohio, data bank for prices and stock quotes,

and real estate information for four major Canadian cities was held in a Detroit data bank.

In addition to this early deliterious example of TBDF, the report noted that a continental system existed covering services between the U.S. and Canada. For example, telephone rates were established by the TCTS, (TransCanada Telephone System), the six member companies which shared the U.S. border, and AT &T (American Telephone and Telegraph). However, because regulatory bodies such as the CTC (Canadian Transport Commission), the Department of Communication and the COTC (Canadian Overseas Telecommunications Corporation), were not coordinated in agreements, ad hoc policies developed.

Instant World (1971:96) also addressed the issue of cultural privacy:

This holds that cultures which may be intrinsically rich and satisfying but which are relatively weak in contemporary terms, can neither assimilate inexpensive foreign-produced media content, nor afford to produce material of equally commanding audience impact on their own.

The study recommended that Canada undertake extended R & D efforts to meet Canada's specific media needs. Other recommendations included: the development of multi-disciplinary executives in the industry for effective futuristic planning, as well as multi-lateral discussions involving governments, industry, and universities.

At the management level, the Telecommission advised the expansion of facilities to accommodate Canada's regional diversity, the integration of networks, and particularly, the development of coast to coast digital transmission systems with linked data bank and information processing organizations.

The main trust of Instand World (1971:169) is:

To redress the balance, authorities - federal, provincial and municipal alike - may find it worthwhile to collaborate in addressing them-

selves to these problems so that the greatest possible benefits can be derived from the individual regional, provincial and national opportunities that Canadian computer/communications systems may be expected to provide with a significant impact on social, cultural, political and economic activity.

Eight years after the Telecommission study, the Consultative Committee on the Implications of Telecommunications for Canadian Sovereignty (1979), under the direction of Chairman, J.V. Clyne, submitted another report. The Clyne report asserted that Canada should work to being a leader in the field of telecommunications and that its position in the field should be a major focus of public policy. With the concern that Canadian sovereignty was being jeopardized in two fields, the Clyne report (1975:5) stated,

First, Canadians are already being swamped with foreign broadcast programming and a new approach to the problem is urgently required; at the same time, there is a danger that foreign interests may achieve a predominant share of the market for data processing services, and far too much of the information stored in data banks will be of foreign origin.

Second, Canada is heavily dependent on imports in telecommunications technology. In certain sectors, such as satellites and information exchange, Canada is in the forefront of competitive technological developments. The exploitation of these developments requires public support that does not entail a vast expenditure of public funds; this is an industrial sector that can create jobs and be competitive on an international scale.

A recurring theme in the Clyne Report is the urgent task of the Canadian government to step into the telecommunications industry with a strategy designed to both preserve Canadian sovereignty and to capitalize on opportunities in the communication industry.

Issues such as broadcasting content, data flow and Canadian ownership of manufacturing and media facilities prompted the Clyne Report to recommend greater government involvement in R & D and in coordinating government and industry efforts.

In The Information Revolution and Its Implications for Canada, (1981), the complexity of communication issues was documented. Because of the fragmented nature of the Canadian economy with its foreign subsidiaries and domestically controlled firms, Canada was described as being vulnerable to conflicting interests -- regional U.S., national, domestic, U.S. foreign. Jurisdictional disputes were documented among the various levels of government, the public lacks awareness of the developing communication issues, and the small Canadian market which cannot provide a strong base for Canada's high technology and electronics industries were outlined. The author adopted the stance that the information society holds both promise and peril for Canadian society, and that government has a key role in maximizing the promise.

More recently the Science Council of Canada reiterated the issues and many of the same recommendations of these previous studies in its Report #33, Planning Now For an Information Society: Tomorrow is Too Late (1982:28). In describing the Canadian electronic industry, the report drew attention to the fact that Mitel and Northern Telecom products can compete on an international level, yet Northern Telecom is only a medium-sized company. Because of the vast amounts of government support in other countries, competition in electronics is as much between countries as companies; further, 72 of the 100 largest Canadian companies are foreign owned or controlled.

The report stated that a significant component in Canada's future should be a broadly-based chip manufacturing capability for R & D, and effective technology transfer to occur. Since Canada depends heavily on natural resources, the Science Council also recommended improved R & D into technical applications for improved productivity, particularly in the oil and mining industries where

extraction is costly. The report attributed Canada's lagging manufacturing sector to the fact that its domestic market of less than 22 million people has not promoted the growth of plants for world scale production and competition.

The Science Council recommended government support of R & D for such things as robotics and specialized computers, but in a reiteration of the rudimentary concern of the previous reports and with renewed urgency, the report (1982:53) stressed:

The creation of a national telecommunications system to provide the infrastructure for the future cultural and economic development of Canada means that telecommunications policy development will require serious attention by the relevant provincial and federal government agencies.

Relative to a future Canadian communication policy, the report (1982:53) continues,

If we do not develop a comprehensive telecommunications policy soon, the resulting confusion will lead to wasted resources, and loss of time in the world race to develop networks and possibly allow the entry into Canada of powerful competing networks from abroad. It is imperative that a policy be enacted designating areas of activity for existing participants, yet providing the needed flexibility to accommodate new competition and the emergence of new technologies.

Both historically and recently sovereignty and other non-economic concerns have been high on the government agenda with reference to the emerging Information Age.

Whatever implications TBDF may have on Canada, the U.S. has recently indicated a willingness to discuss initiatives on sectoral free trade; among the sectors under consideration is informatics. With both countries committed to the multilateral GATT trading system, bilateral agreements will require special handling.

The U.S. has called for cooperation in expanding trade and investment, for the removal of such irritants as the America-Buy Canada provisions, for reducing uncertainties about access, and for removal of other non-tariff barriers. Yet recent U.S. government hearings regarding the steel industry call into question the de facto call for "free trade". U.S. government quotas on Japan auto imports is another example of not so "free trade" approaches when the U.S. perceives itself (or its voters) to be adversely affected.

Essentially pursuing the status quo with regard to TBDF, or even a modified status quo, will continue to see ad hoc policies and policy by incrementalism ultimately resulting in the U.S. being in a favorable or priority position. This is for two major reasons. The first being simply the size, and quickness with which the U.S. government responds in its own vested interests; second, many of the institutions and industries affected by any negotiations are either highly interconnected within the U.S. market or, in fact, are corporately controlled by American parent firms.

Therefore the net result of any continuation of simply relying upon a sectoral approach that responds merely to irritants or to points of conflict will simply see a gradual decline in the Canadian position in the long run. This is true in the three major areas discussed previously, namely, privacy, employment and sovereignty.

Options

What then, are the options? If the status quo or a modified status quo and incrementalism are not in the national interest, what other actions may be taken? Well, we may look to the example of Brazil. It is a negative model yet it deserves examination to determine if their model or approach may be applicable to the Canadian situation. Once I have described in some detail the Brazilian response to the issues of informatics, privacy, computers and TBDF, I will then spell out a new Canadian option.

TABLE I

PERSONAL PRIVACY REGULATIONS & ISSUES		TABLE 1																								KEY	
A. TYPE OF REGULATION		AUSTRALIA	AUSTRIA	BELGIUM	CANADA	DENMARK	FINLAND	FRANCE	HUNGARY	ICELAND	ISRAEL	JAPAN	LUXEMBOURG	NETHERLANDS	NEW ZEALAND	NORWAY	PORTUGAL	SPAIN	SWEDEN	SWITZERLAND	UNITED KINGDOM	UNITED STATES	WEST GERMANY	EEC	COE	OECD	IBI
B. PROTECTED PERSONS - Natural Persons Citizens/Residents Only Legal Persons		X	X	X	X	X	X	X			X		X	X	X	X		X	X		X	X	X	X	X	X	
C. NAME-LINKED DATA--EDP/ADP Manual Data Processing Collection/Flows/Storage		X	X	X	X	X	X	X			X	X	X	X	X	X	X	X	X		X	X			X	X	
D. CONTROL - DATA Control Boards Registration/Licensing			X	X	X	X	X	X			X	X	X	X	X	X	X	X	X		X						
E. RIGHT TO ACCESS/CHALLENGE Freedom of Information		X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X						X		
F. LEVEL OF GOVERNMENT - Local National International		X		X	X	X												X		X		X					
G. REGULATED SECTOR - Public Private Self-regulation			X	X	X	X	X	X			X	X	X	X	X	X	X	X	X					X	X	X	X
H. ENFORCEMENT Fine Victim Compensation Data Confiscated/Destroyed							X						X								X						

Note: The countries studied differ in degree of "regulatedness" or in strength of laws and diligence of enforcement. An "x" simply denotes the existence of a condition, not its strength.

Source: Transnational Data Report 1978-1983, Vols. 1-6; EEC, COB, IBI REPORTS, OECD Guidelines and personal correspondence.

Table 1: Transborder data flow, data protection, and privacy regulation in 22 nations

In Brazil, the government believes that it does not want to become a "computer colony"⁴ and this has led, over the last decade, to a complex network of regulations administered by the Special Informatics Secretariat. Brazil sees independence in computer technology as a matter of sovereignty and national pride, plus the government has taken strong steps to insure the development of a broadly based domestic informatics industry. Nationalism was in fact present at the birth of Brazil's computer industry when, in the mid 1970's, the country's Naval Ministry demanded the security for its computer systems installed in its frigates and destroyers.

As a result, the entire issue was taken up by the military government's National Security Council. In 1977 it sponsored the creation of a state computer company, Cobra, and two years later formed the Special Informatic Secretariat, headed mainly by army and navy engineers.

Since then, an alliance of military officers, local entrepreneurs, and leftist cultural nationalists has formed a coalition around the ideal of protecting and enlarging the emerging Brazilian computer industry. Foreign-owned subsidiaries, principally I.B.M.,⁵ have decreased their total share of the market. In five years their share has fallen from 77 per cent to 53 per cent. Since 1979, domestic sales of Brazilian-made computers has gone from 200 million to almost 700 million. Sales of imported computers have decreased from a high of almost 300 million in 1981, to less than 100 million in 1983.

Brazil's Congress is now debating a law to govern informatics policy, plus the government wants to eliminate the confusion caused by the plethora of ad hoc regulations. No matter what the ultimate decision of Brazil's government will be, the figures indicate that blocking imports has helped the local industry thrive. The government's strong steps have insured the development of a domestic informatics industry. The net losers are the foreign TNC's.

There has been other activity as well.

Among the actions that have been taken internationally are OECD's "Guidelines Governing the Protection of Privacy and the Transborder Flow of Personal Data" (Sept. 1980). The Council of Europe adopted a "Convention for the Privacy of Individuals with Regard to Automatic Processing of Personal Data". In the case of non-personal TBDF, according to the center on Transnational Corporation, about 60 countries have issued some official statement.

Another example is Sweden which has operated its Data Inspection Board since 1974. Data banks containing information about the activities of individual citizens may not be constructed without permission of the "inspectorate". If any personal information is intended for use outside Sweden, its issuance depends on special permission. The trend towards increased data regulation, particularly in Europe, will both ultimately and indirectly affect TBDF in other countries.

A Continental Communication Pact (CCP):

Reports, studies, and commissions attempting to address the TBDF issues have failed to come up with clear-cut Canadian strategies. Questions of privacy, competition, technical change, and regulation on a multi-lateral basis add to the complexity of policy making. In order to deal effectively with the TBDF problem, and in order to be more realistic, the issues should be broken down into something more manageable; such as a single bilateral TBDF agreement with Canada's trading partner - the U.S.

Key assumptions are fundamental to the approach of policy making on the TBDF question. Canada's conviction is that enormous benefits can come with the increases in TBDF. It has been suggested that in order to capitalize on the opportunities in the industry, telecommunications policies should be developed so that Canada can gain entry into the powerful competing networks in the U.S. Interruptions in flows of data between our borders could have negative implications to the computer service industry and almost all industrial activity in

Canada. If trade in data, information, and associated services is to proceed smoothly, Canada must resist temptations to become protectionist. We do not want to become Brazil North.

In establishing a "Continental Communication Pact" (CCP) with the United States, Canada and the U.S. would do well to examine the Auto Pact Agreement of 1965. That agreement was signed to provide duty-free trade by manufacturers in automobiles and parts between the U.S. and Canada. At the time of the pact, Canada's position in the automobile industry was weak; it was incapable of competing in an international market because of the expense to duplicate U.S. cars in Canadian subsidiaries. The Auto pact promised to redress the deficit in the sectoral balance of trade and expand production in Canada.

Recently in discussing U.S./Canada economic relations, U.S. Deputy Assistant Secretary of State, James Medas stressed that the Reagan administration is firmly committed to the promotion of freer trade. Last month, Canada and the U.S. signed a safeguard understanding to help assure prompt consultation and cooperation on shared trade concerns. The stage is now being set for a CCP to be established. The U.S. Government has stated a variety of sectors under consideration to the recent Canadian initiative on sectoral free trade, informatics being one of them.

Let us examine the CCP in more detail.

First, the CCP will involve broadcast, telecommunication and computer services/supplies.

Second, it will involve a continental communication grid involving the national governments of the United States and Canada.

Third, communication stakeholders (both public & private, including provincial governments) should be consulted prior to the formation of a CCP.

Just who are the stakeholders. A sample list follows:

- . Computer firms
- . Telesat Canada
- . TCTS & CNCP
- . Provincial telephone companies
- . Cable companies
- . Canadian independent film producers/Telefilm
- . National magazines
- . Hardware suppliers and manufacturers, e.g. Mitel, Northern Telecom, NABU, etc.
- . Software suppliers - information providers, e.g. Infoglobe
- . Pay TV distributors
- . Advertisers
- . Financial community
- . Investors
- . Governments - relevant federal and provincial departments
- . Labor unions

A few words of explanation. Today we have a series of ad hoc and disjointed, short-run and frequently conflicting policies. In addition, the federal government's involvement frequently fails to take into account either the provincial role or perspectives.

Meanwhile, DBS, cable, videotex, mobile radio and TBDF are growing on a continental scale precipitating interrelated policy concerns. The CCP would broaden the market for Canadian products, both hardware and software, so as not to be swamped by foreign mostly American products. To have the CBC and CTV carried on all U.S. cable systems, or new pay service(s) carried on U.S. satellites would financially aid the Canadian services and redress the current imbalance. In addition, it would provide guidelines for Canadian cable companies such as Rogers, Maclean-Hunter, Cablecasting, etc., with franchises in the U.S.

The U.S. networks are carried on Canadian cable systems and U.S. pay services are being received by a growing number of Canadian-based earth stations (TVRO's); now the major question is why not have a reciprocal agreement to benefit Canadian manufacturers and software merchants.

A major indicator of Canada's need to develop a communication pact is the trade deficit in computer and office equipment. Chevreau (1983:B 5) indicates that, in 1982, Canada's trade deficit passed the \$2 billion level; exports totalled \$890 million while imports of computers totalled \$3 billion.

In spite of government efforts to reduce the deficit through sales of Telidon or Office Communications Systems, Evans Research Corp. of Toronto predicts the deficit will grow to \$5 billion by 1986. The trend towards office automation has increased Canada's demand for foreign office electronics equipment. DOC's throwing a few dollars into office automation projects only masks the more serious underlying structural problems.

There is a greater hope for the marketing of Canadian programming in the U.S. albeit the demand is not yet proven. From the CBC Annual Report (1981-1982), it is apparent that a market does exist for Canadian products, particularly those relating to the arts, in addition to the news programs, *As It Happens* and *Sunday Morning*. These have set the precedent for the possibility of a greater Canadian presence in the American communications scene. An information pact would outline the strategy for the promotion of CBC, NFB, CFDC or Telefilm productions on American networks and theatre screens.

With regards to satellite technology, Canada is being forced into a pact with the U.S. over the issue of future DBS services. Both Canada and the U.S. are seeking to reserve prime satellite orbital slots for future use. While the FCC is planning to establish a DBS system with up to 13 services, Canada is requesting 6 slots with full frequency bandwidth of 500 mhz reserved for each service. Canada's request raises the problem of maximum spacing between each satellite which will be necessary to accommodate the proposed Canadian services, yet it will also mean that the U.S. will be left with only 4, mainly unfavorable slots. Negotiations will require adjustments to the requests of both countries, although the U.S. favors a system where applications are

granted on expression of demand and first-come first-served.

Yet once again, Canada is demonstrating concern for the preservation of its sovereignty by seeking an orbital slot for each of its five time zones and an additional slot for French programming for Quebec. While Canada does not have the economic resources to develop these services immediately, it is seeking to prevent the U.S. from absorbing all the available slots now. (It is to be remembered that other smaller countries, particularly in South America, are hoping to use DBS services in the future, and are looking at the same parking spaces that Canada and the U.S. are hoping to capture.)

Another example of the informal movement toward a CCP is a recent agreement between DOC & NASA to establish a cooperative effort to define a single space programme to meet mobile communication needs in both countries. This joint effort may result in a common mobile satellite system offering similar services in both countries.

The issues of both content and hardware/software sovereignty could be addressed by the negotiation of a joint satellite serving both the American and Canadian public. Canadian strategy on this point would involve a bilateral agreement with the United States regarding the division of revenues from the joint satellite network; the equity of content/carrier status, and the equal division of American and Canadian programming services provided by the satellite, plus shared R & D. The R & D aspect will protect Canada from becoming a technological serf in the Information Age.

A final point. This CCP proposal is aimed at strengthening Canadian cultural industries; the status-quo requires writers, producers, directors, etc. to continually water-down Canadian references, history, themes, etc. to accommodate U.S. commercial concerns. With the CCP the carriage would be guaranteed and therefore a Canadian perspective dealing with Canadian ideas, norms, perspectives, etc. (like the Australian film

industry) will be possible. The CCP is not aimed at a mass audience philosophy but rather is consistent with the narrow casting or tiering approach of evolving North American cable-satellite hybrid systems.

Without such a bold enterprising move as the CCP, Canada will lose its already weak position with regards to hardware technology and software. The status quo is really a closet policy giving Canada the worst of both worlds (hardware and software). Ad hoc policies are not sufficient to guarantee a significant Canadian presence in the international and continental scene, and market forces have historically indicated that American programming has a significant edge over Canadian production prospects. Therefore, the urgency to develop a CCP with the United States is increasing and it is up to Canadian policy-makers to explore the opportunities in order to secure Canadian privacy, sovereignty, and employment opportunities in the Information Age.

Conclusions

In sum, this paper has reviewed the area of TBDF through the prism of privacy, in part, with additional concern for the areas of employment and national sovereignty. Also discussed were three models of approach for future action in the area of TBDF.

First, an examination of the status quo, or modified status quo, which will see the Canadian position deteriorate over time in favor of both the U.S. government position as well as for the benefit of the commercial and corporate interests of U.S. communication industries was discussed.

Second, an examination of a restrictive TBDF model, particularly in Brazil, was examined as well as outlining their rationale and actions in terms of the general area of informatics.

Third, a new plan was outlined and elaborated upon dealing with a Continental Communication Pact (CCP). The CCP was outlined in terms of the various stakeholders involving broadcast, telecommunication, and computer firms.

In addition, examples were cited to demonstrate the range of issues, a possible procedural approach involving both the public and private sector as well as provincial governments, and finally, comments were made concerning the ability of the CCP to both enhance and enrich the cultural sovereignty of Canada as a nation state, as well as provide for a more equitable distribution of research and development for future communication technologies, plus some enhanced likelihood of additional manufacturing jobs being available in Canada in the high technology area.

Endnotes

1. For the purpose of this paper "transborder data flow may be defined as the transmission of machine readable data and information over trans national computer and other electronic communication systems for the purpose of storage, retrieval, or processing". "Transborder Data Flow, Informatics, and National Policies", Journal of Communication, Winter, 1984, p.154.

2. The OECD data declaration will be discussed in Paris on July 2-3, 1984 by the OECD Working Party on TBDF.

3. It is somewhat ironic that in 1984 the nation with the greatest investment in international communication affairs, the United States, is also the same nation that is doing its utmost to close down those international fora or associations that are most likely to aid it in its goals, whatever they be, whether it is free flow of information, TBDF, or free trade, or rational and efficient use of the international spectrum space.

Consider the following that points the accusing finger at the Reagan administration for manipulating U.S. policy and participation in international communication affairs in a deleterious, disruptive and negative fashion.

"U.S. Off Course

On the contrary, the U.S. is moving in the reverse direction, abandoning or neutralizing a forum capable of accommodating a broad, varied membership and of accepting revised agendas and new perspectives. The U.S. proposes to leave the United Nations Education, Scientific and Cultural Organization (UNESCO), partly because of its attention to disputed international communication practices and conditions. The U.S. is pressing the International Telecommunication Union no less (ITU) to confine itself to technical concerns. It is reducing its participation in the U.N. Committee on Information and in the legal and technical sub-committees looking at future spaces communications for the Committee on the Peaceful Uses of Outer Space. It stands apart from the Intergovernmental Bureau on Informatics (IBI) and the U.N. Center for Transnational Corporations, both of which exhibit deep interest in transborder data flow problems involving the Third World." Chronicle of International Communication, April, 1984, Volume 5, Number 3, page 7.

4. For detailed discussion see: T.L. McPhail, Electronic Colonialism: The Future of International broadcasting & Communication, (Beverly Hills, Calif.: Sage Publications, 1981). Also refer to other writings by the same author listed in the bibliography.

5. I.B.M. also has some domestic (U.S.) critics.

"Moreover, given I.B.M.'s recently demonstrated litigiousness with its smallest opponents, would be competitors have experienced a deep chill, especially if there are former I.B.M. employees. The danger is that a class of 'technological serfs' is being created -- those who once worked for I.B.M. are now forever subject to trade secret litigation. It is a disturbing paradox that, now freed from (U.S.) government litigation, I.B.M. is using litigation to stifle competition

and block the diffusion of technology in elevation, especially in the main frame plug-compatible markets." New York Times, Sunday, May 13, 1984, page 2F.

6. I will not discuss the details or results of the auto-pact here, but Beigie (1970) and others have studied it elsewhere.

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TBDF AND THE SHAPE OF A CANADIAN-AMERICAN INFORMATION AGREEMENT: PROBLEMS AND PROSPECTS

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The technological revolution in electronic information systems and telecommunications has made possible the emergence of the first truly global economic system in human history. As ever larger amounts of information move across borders, increasing numbers of scholars, officials and business people are turning their attention to the implications of transborder data flows (TBDF) for sovereignty, national security, cultural integrity, proprietary rights, legal structures and the regulatory environment.

This has been going on for over a decade but the issue has taken on a particular kind of urgency for Canada as this country contemplates the possibility of entering into some kind of a trade liberalization agreement with the United States that would involve, among others, the 'informatics' sector.

It is not necessary to recall in this place the reasons behind attempting a somewhat awkward compromise between the status quo and the politically unpredictable course of full free trade. Suffice it to say that the Canadian government recognizes the seriousness of Canada's current economic plight and is willing to attempt unconventional remedies to advance the structural adjustment which the country needs. Securing access to the huge American

market, even if only in a few important sectors, might help some industries to become competitive on a world-class basis, and if successful, it might assuage some nationalist fears of surrender to complete American domination.

Given the political minefield the Canadian government had already entered by initiating sectoral trade liberalization discussions with the United States, the inclusion of 'informatics' as one of the sectors promised to make an already complicated set of negotiations much worse. After all, it is difficult enough to define a specific sector, decide who should choose the sectors to be liberalized, establish a negotiating structure which takes all interests into account, and deal effectively with non-tariff as well as tariff forms of protection. But adding the ill-defined and quickly changing sector of informatics to the discussion ensures that the talks will be long and difficult, indeed to the point that one must question if there is sufficient political will on both sides to bring them to a successful conclusion.

It is generally agreed that adding informatics to the discussion was a suggestion which came from the American side. The United States is less concerned with the Canadian market as such, and more with the example that such an agreement would have for its remaining

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trading partners. As the United States yields the competitive edge in traditional forms of manufacturing to newly industrialized countries (NICs), it has increasingly come to emphasize its comparative advantage in information technology and the trade in services which depends so much on that technology. Yet here too, the United States is being denied access to foreign markets by protectionist measures seeking to provide a climate in which smaller or less developed economies can nonetheless establish their own information industries and survive competition from the outside.

A mutually satisfactory agreement liberalizing trade in information-related goods and services between Canada and the United States would demonstrate that it is possible for a large and small economy to coexist to the advantage of both and this might have an exemplary impact on American trade objectives elsewhere.

For Canada, a trade liberalization agreement in informatics would also confer certain benefits. It would open up a huge and sophisticated market to Canadian hi-tech companies. It would force those companies to become world-class and those which did so could compete anywhere on the globe. And it would give Canadians access to the latest technology at cheaper cost, thus raising living standards and promoting economic growth.

Before such a happy vision can actually come to pass, however, there are a host of problems which need to be solved, or at least considered. Perhaps not all of these problems can be solved, but in raising the issue for discussion, the sectoral trade liberalization exercise will force us to think harder and deeper about some of the implications of TBDF.

Perhaps the most basic issue which demands resolution is the question of information as property. It is quite clear that computer hardware is property, and there is an increasing recognition that software too deserves patent protection, but what of the raw data assembled by computer, carried by

telecommunications systems, and processed according to the software? Can one hold proprietary rights to data? If not, then it will be impossible to protect data banks (and privacy) from penetration. If data is held to be property, then governments seeking additional sources of revenue might be tempted to tax it.

If governments do attempt to tax data, then the method of valuation becomes critical. The obvious difficulty here is that the value of information depends entirely on its context, and schemes of valuation which simply measure the volume of a stream of digits are inherently absurd not to say unfair. More sophisticated attempts to tax data by encoding it before transmission add bureaucratic complexity but do not change the basic fact that the value of data is impossible to establish with any precision and attempts to do so in order to tax it will only inhibit trade and add to confusion.

One interesting feature of current attempts to tax data is that they generally depend on the data actually moving from one place to another: no one has seriously proposed taxing data stored quietly on a disk somewhere. But if moving data is liable to taxation, there is no logical reason why that process should be restricted to data moving across a border - it could with equal justice be applied to data moving within a country as well. At that point the monitoring required would be so horrendous as to undo much of the efficiency which the modern technology originally created.

To add one final wrinkle, there are those who argue that data subjects have some proprietary rights to the information about them. The argument for protecting privacy is based on this notion, as are demands from LDCs that they have access to satellite information about their resources. If indeed this proprietary claim is upheld, then surely reason demands that such co-owners of information also share any tax burdens levied on it.

The arguments presented above may seem somewhat tortured to the pragmatic mind,

but it is precisely on such arguments that court judgments are based and without prior clarification of definitions and principles, any international agreements attempting to liberalize trade in information will only serve as the prelude to endless litigation. In the case of sectoral trade liberalization between Canada and the United States, proprietary rights to information stored in the other country would have to be guaranteed and tax treatment on both sides of the border would have to be harmonized.

The questions of proprietary rights is only the beginning of a long and involved set of issues emerging from the TBDF discussion. If indeed information is classified as a form of property, how can that property be legitimately protected from theft, destruction, or unauthorized access. This becomes a much more serious problem in the event that an Integrated Digital Services Network is created. Some countries have opted for specific technologies or unique standards as a means of protecting themselves, others have chosen complex security specification procedures for hardware and software. Such measures can however inhibit trade in information so that a fine line between protection and efficiency must be defined and adhered to.

Given the increasing quantity of data stored in electronic form, it is inevitable that courts will have to admit electronically recorded information for evidence in court, for documentation of transactions, and for authentication. Any trade agreement liberalizing information exchange will have to be preceded by some agreement as to the reciprocal admissibility of electronic evidence in court, and when the court system is complicated by several levels of government, and variations from state to state or province to province, the chances of securing such an agreement seem perceptibly.

The previous point is an important one inasmuch as any trade agreement will be challenged or tested in the courts sooner or later. For example, the question of legal liability is sure to arise in the event that damage to a

system is caused by the transmission of a defective program or data. How is the source of the defect to be traced? Who is liable for damages and for what amount? Is the case to be considered negligence, breach of contract, breach of warranty or product liability? And here too, can we be sure that all state and provincial courts will treat data in the same way?

To add to these legal complications, there are also political ones. In many parts of Europe, for example, there exist centralized, state-owned Post, Telegraph and Telephone agencies (PTTs) which are fighting private business tooth and nail to retain a monopoly over telecommunications services. For the PTTs, the objective may be to use its monopoly position to ensure a certain minimum social objective such as providing cheap and universal telephone service. The objectives of business, on the other hand, are to establish private lines or leased circuits which could serve its needs far more cheaply while ensuring the privileged and confidential nature of business communication.

A similar struggle is likely to emerge in Canada where Canada Post, CN/CP, and the telephone system, though not amalgamated into a single PTT, nonetheless enjoy regulatory protection of their monopolies. That protection is currently being challenged by Canadian competitors, but the challenge will become quite dramatic if an attempt is made to liberalize information trade between a relatively regulated Canadian environment and a United States which is moving decisively in the direction of deregulation.

It is a fair question as to whether Canada's regulated monopolies will be able to compete effectively against the electronic service 'supermarkets' arising south of the border. At the very least, they too may have to expand beyond the range of services their regulations currently allow and in that case one may well ask whether it is wise or safe to permit such giant, multiservice monopolies to mushroom.

One final and inevitable legal problem exacerbated by the increase in TBDF is

that of conflicting legal requirements brought about by extraterritorial application of the laws of one jurisdiction to the territory of another. This has already been an irritant in relations between Canada and the United States, especially because of the problems the Bank of Nova Scotia encountered in trying to satisfy the demands of Florida courts which ordered the surrender of documents held in the Cayman Islands which the government of the latter forbade the bank from producing. At the very least, laws which prevent the transmission of data to countries which lack the privacy protection of the country of origin may be held to have some extraterritorial effects. There are also demands from multinational enterprises that their global operations be open to scrutiny by tax officials (unitary taxation) or labour unions (the European Vredeling proposals) in a particular country where they may only have a small proportion of their total holdings. It is likely that the problems of extraterritoriality will increase in the future and it is to be expected that in a country as prickly about its sovereignty as Canada, this will be an important component of any trade liberalization talks with the United States. The latter will have to abstain from any hint of extraterritorial application of American law if it wants Canada to enter into an agreement.

The converse of the extraterritoriality issue mentioned above is the need for some harmonization, at least in the regulatory environment. It is not likely that trade can be liberalized much between countries with different regulatory environments, tax systems, standards, and even measuring systems. Certainly trade can and does pass between them, at high volumes, but such differences in regulatory treatment will exact their toll. At the very least, it is to be expected that Canadian companies confined by strict regulations may find it difficult to compete against American firms operating under no such constraints.

Those who negotiate a trade liberalization agreement in information be-

tween Canada and the United States will have to be aware of walking a fine line between resisting extraterritoriality while encouraging harmonization wherever feasible. This will not be an easy task and we should not become too impatient if it takes a long time.

All of the problems listed above are of a juridical nature and they do not even begin to address the thornier political issues of cultural integrity, national security, and human rights. They are highlighted here not to discredit or decry the sectoral approach, but simply to point out the potentially huge set of issues which such negotiations will call forth. The fact that they will have to be addressed at all marks a form of progress in consideration of TBDF issue and the solutions which Canada and the United States reach in the process, may serve as useful examples to other countries attempting similar agreements.

Such solutions may prove to have a great value in turning back the protectionist tide currently seeming to engulf trade in information. Countries with a less developed information industry fear the asymmetry in their relations with technologically developed societies, and they fear being shut out of the information revolution and relegated to being the proverbial 'hewers of wood'...

If information is to be the great equalizer in the economy of the future, the even small countries want to secure their share of that industry and hence their recourse to discriminatory pricing, local content requirements, restrictions on access to closed information systems, limits on the types of equipment available to users, restrictions on modes of transmission, and restrictions on market entry, to name but a few protectionist measures which reduce the volume of TBDF and inhibit the information trade.

Businessmen argue that some kind of dramatic progress is needed to break up what is fast becoming a log-jam in the international flow of information. Just as the unprecedented economic boom of the 1950's and 1960's occurred along with progress in the GATT in eliminating tariff barriers, so too it is argued an

other GATT round devoted to the trade in services and to non-tariff barriers may have the same salutary effects.

Yet it is obvious that the number of participants in the GATT has grown, as have the differences in their levels of development and their philosophical outlooks. We cannot expect quick and easy progress in this forum, though here too, a viable Canada-U.S. agreement may have a healthy exemplary effect, particularly if it is cast in a form which could easily be expanded into a multilateral agreement.

Because of the potential importance of a Canada-U.S. agreement in information trade, it would be advisable to proceed with care and with the appropriate consultations at every step. That means, of course, adequate input from the private sector, whose technological innovations and applications, after all, are driving forward the increasing use of TBDF. This is not to say that the voice of business should be the only one heard, but it is an important partner because of its familiarity with the technology.

The business community would probably agree on several general principles as it formulates what it would like to see in any Canada-U.S. agreement. Among those principles are the following:

- the exchange of information is vital to technological progress and economic growth
- business organizations should have the right to communicate with themselves (ie. between branches) and with each other
- we must recognize the global interdependence of communications networks: restrictions in one part will have a multiplier effect on other parts of the system
- liberalization of the trading environment cannot occur without liberalization of the conditions under which the exchange of information occurs.

Armed with such general principles, the business community would look to an agreement between Canada and the United States which would enshrine such an approach and flesh it out with concrete solutions to more specific issues. Among those issues are the following:

- the right of presence, or the right of access to information resources which would imply some guarantee that companies could connect to networks, receive data, transmit data, or receive services across borders
- some guarantee of national treatment, particularly in areas such as government procurement
- would most-favoured nation status be offered to third parties under a bilateral Canada-U.S. agreement on a reciprocal basis, ie. that treatment mandated by the agreement could be applied to third parties if they agreed to treat Canadian or American companies in the same way?
- would the United States recognize the tremendous advantage which U.S. Defense Department and NASA procurement confers on the American information industry and agree either to strictly national treatment of Canadian companies, or some compensatory advantages such as tax relief or subsidies for Canadian firms excluded from U.S. procurement?

In general, non-tariff barriers to trade in information are probably far harder to define or remove inasmuch as they can easily get confused with issues such as national security or cultural integrity. What makes the entire problem that much more difficult is that information in and of itself is not a sector in the same way that the computer manufacturing industry is clearly a sector. Information is an input or an intermediate good which affects the productivity and performance of virtually every other sector in the economy.

Consequently, negotiations on how to treat trade in information may involve consultations with a wide variety of economic sectors, not just the computer manufacturers and data processors that

would seem at first glance to be the obvious interlocutors in the process. The linkages between and among economic sectors become a critical element in determining the impact of any trade liberalization agreement between the two countries.

If the private sector expects to be treated seriously in this process, then it must be sure that its input represents the best and most thoroughly documented expertise available to it. If interested companies and business associations wish to be included in the process, their contribution must be adjudged to be valuable and that can only mean the kind of solid research, careful definition and scrupulous documentation that earns respect and convinces the other participants. That kind of meaningful contribution will not come cheaply and businessmen must be prepared to contribute sufficient resources to ensure that the debate takes place at the level of technical expertise and not at the level of vague generalities and sloganeering. Without that kind of serious commitment, the overwhelming resources of the government will prevail and the ultimate solution reached may reflect bureaucratic and political priorities rather than the imperatives of economic reality.

It is also clear that any treaty or agreement entered into between the two countries cannot hope to treat of and settle all of the problems which will inevitably arise in a trade which is so extensive, complex and fast changing as information exchange. Whatever treaty is negotiated will have to be flexible, open-ended, and susceptible to subsequent monitoring and modification.

Indeed, the two countries may consider some kind of bilateral standing group to track the implementation of the agreement and defuse complaints before they fester into major political confrontations. It may be worth remembering that every regulation offers a fixed target to the innovator who would devise some way around it. With the quickly changing technology of today, any fixed agreement would soon be overtaken by developments that rendered

it obsolete. If the two countries want to negotiate a meaningful agreement on the information trade between them, they would do well to consider the advantages of an organic system such as the British constitutional tradition which enshrines basic principles and then relies on precedents and interpretations that change with the times when deciding how to apply those principles. Something like this approach may be necessary in the highly volatile environment of transborder data flows.

RETAIL BANKING

JAMES C. GRANT *

Vice-President

Strategic Planning, Retail Banking

The Royal Bank of Canada

I would like to join my fellow panelists and conference speakers in welcoming the Government of Ontario's initiative in bringing together representatives from Ottawa, the provinces and territories and the private sector to discuss privacy and related issues. I am pleased to note that the views of the private sector have been actively sought. On behalf of my business colleagues, and certainly on behalf of the Royal Bank, I am happy to contribute to the discussion of these issues.

Let me begin by trying to pin down what is meant by the phrase "transborder data flows". It was coined, if I am not mistaken, by today's Chairman, Russell Pease, at the O.E.C.D.'s first conference on the issue in 1977. It is a bit of a catch-all that covers a complex of interrelated subjects -- from access to computer services and telecommunications standards to copyright law, broadcasting, cultural policy and privacy. I sometimes wonder if there are any activities that do not somehow relate to the transmission of information across national boundaries.

This morning, I would like to discuss two subjects that fall under the umbrella of transborder data flows. One, primarily economic, is the exchange of commercial information, technology, knowledge and computer services. The other, primarily a human rights concern, is privacy protection.

It has been suggested that economic efficiency depends on the "free flow" of information across national borders. In fact, I doubt that totally free information flows exist or even that they are desirable. Electronic highways need rules of the road. Just as technical rules are needed by computer and telecommunications engineers, rules on access to service and markets are needed to create a predictable environment for business planners. It is also evident that rules are needed to protect sensitive national interests, be they economic, cultural or legal.

There are few national interests more sensitive than that of privacy protection. Privacy is important for two main reasons.

First, in the "information age", privacy protection is important in its own right. People demand it, although it is not entirely clear what exactly they want. Abuses are possible and protection must be "built in" to information processing systems.

Second, given the volume and economic importance of transborder information flows, uniformity in the fundamental ground rules of privacy protection is important. Privacy laws, regulations and corporate codes need not always be identical. But they do need to be consistent enough to offer individuals the

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same basic protection of personal information, no matter where it is stored or processed.

Governments are not alone in appreciating the importance of privacy protection. Banks, for example, depend as much on public confidence as governments do on voter confidence. Our customers also happen to be governments' employers. Whether they wear consumers' or voters' hats, they are concerned with what happens to the personal information stored in the automated data bases of both business and government.

As we heard in earlier conference sessions, North American privacy legislation applies mainly to the public sector and is, in any case, still in its formative stages. This gives Canadian business what I think is a "window of opportunity" to take the initiative in developing privacy standards. These standards should be rigorous enough to provide full public confidence without introducing economic inefficiencies -- a flexible approach, in other words.

But flexibility does not mean creating loopholes and fiddling the rules. It means adapting fundamental standards of privacy protection to specific industries and organizations. For example, many bank customers expect banks to retain credit files even after a loan is retired. Part of their reason for dealing with us is to build a widely accepted credit rating which they want disclosed in appropriate circumstances and with prudent safeguards. Flexible standards are not just more economically efficient, they can also be more effective in protecting privacy.

Business realizes that if it fails to regulate itself to the public's satisfaction, it is leaving the door open to detailed government regulation. And I, for one, would be very pleased to relieve civil servants of that burden. Within my industry, the Canadian Bankers' Association and its member banks, including the Royal, are currently studying the issue of privacy protection with considerable care.

In working with government and the public to build a consensus on privacy, business will have several prime concerns in mind.

One is that the "Rules of the Road" be clear and predictable. This is essential if modern business is to make optimum use of computer technology to promote efficiency and competitiveness, particularly in international markets. Sudden changes in government policy can jeopardize large investments in equipment, research and development and systems engineering.

Another concern is that the rules be uniform within Canada. One would think that, as a matter of public policy, Canadians should have the same basic privacy rights from coast to coast. There is also a pressing economic reason for uniformity in a federal state with a small domestic market. Disruptions in inter-provincial information flows could deprive Canada of its common market in computer services. Identifying uniform privacy rights should be straightforward. More difficult, but nevertheless vital, is the uniformity of regulatory mechanisms. This will require the precise meshing of federal, provincial and private sector codes.

A third concern of business is that Canada's privacy protection rules be in harmony with those of our main trading partners, in particular the United States. Otherwise, Canadian firms could face increased risk and cost in a highly competitive environment.

The search for widely accepted principles of privacy protection should begin with the O.E.C.D. Guidelines on privacy and transborder flows of personal information. They provide valuable reference points for both international and federal/provincial harmonization. The Guidelines are gaining acceptance. They are both comprehensive and flexible enough to reflect the core of privacy rights common to codes, bills and laws in a number of countries, including Canada. The Royal Bank, among others, has urged the federal government to endorse them formally. The U.S. government and many corporations outside Canada have already done so.

I would like to spend the next few minutes on the rationale for my three prime concerns -- the need for clear privacy rules, the need for uniformity within Canada and the need for harmonization internationally. Managing these issues effectively will greatly strengthen Canada's international competitiveness. To grasp why, it is necessary to understand the growing economic importance of computerized information services.

Ready access to these services, internationally and inter-provincially, is essential to efficiency, wealth creation and output growth in all sectors of the Canadian economy. More and more industries are becoming major users of "high tech" as computer applications proliferate and the cost of data processing falls.

In the service sector, for example, which accounts for 2/3 of Canada's GNP and an ever increasing portion of world trade, computerized information systems are boosting productivity and transforming product lines and delivery systems. In manufacturing, computers are used for everything from production to market research, distribution, inventory control, product design and financial planning.

In agriculture, let me give you an example from the Royal Bank itself. Our agrologists now use portable computers to help farmers forecast cash flow using estimated crop yields, input costs and world market prices. Projections that used to take hours are done in seconds, using up-to-date computerized data on commodity prices, weather patterns and so on.

Technological advance may be creating many new cost-efficient information services and data bases. But their utility rests on ensured, uninterrupted access for users. Consider the case of Dresser Industries. You may recall that after martial law was imposed in Poland, the U.S. government prohibited that firm's French subsidiary from supplying equipment or technology for the Trans-Siberian gas pipeline. What, might we guess, happened to the economic value and reputation of Dresser France the instant it was denied access to expertise and information?

In the absence of international agreements ensuring uninterrupted access to information services, business faces an uncertain environment. There is a danger that countries will act unilaterally to restrict the kind of information that can be sent, processed or stored abroad. The result could be an array of restrictive rules and regulations, ranging from tariff and non-tariff barriers to government attempts to register, tax and monitor all data banks. The threat of information protectionism is greater for Canada, with its relatively small domestic market, than it is for larger nations and trading blocs.

For all these reasons, the Royal Bank has proposed and actively promoted the idea of a sectoral agreement between Canada and the U.S. covering what we call "traded computer services", a bilateral agreement that could set the pattern for subsequent multilateral liberalization. Our proposal is double-barrelled.

One barrel is aimed at establishing mutually acceptable trading rules governing access to markets for Canadian and American suppliers, and access to computer services for Canadian and American users. The other barrel is aimed at the harmonization of privacy protection in the two countries. I have just discussed the economic and trade issues. Let me now turn to privacy.

An international patchwork of privacy protection regimes could have much the same economic effect as overt restrictions on information trade and exchanges. Business would be confronted with the costs and inefficiencies of multiple regulatory compliance from country to country. Even worse, there is the risk that governments will insist that all personal information be processed in domestic data banks on the grounds that other countries do not offer equivalent privacy protection. Except in Europe, international ground rules on privacy are hazy. Information flows can be disrupted in arbitrary, unpredictable ways.

Another source of uncertainty has been the perceived risk that some European countries could use privacy protection

as a smokescreen for trade protectionism. Government regulators must keep privacy rights separate from trade issues. Privacy protection is complex and demanding enough that it would be unwise to mix economic problems in as well.

The notion of privacy has become quite sweeping. From a banker's perspective, the evolution is interesting. Traditionally, bankers have had to meet high public expectations concerning two aspects of privacy:

The first is "security": bank vaults are now being supplemented by the computerized "gate-keepers" protecting data bases from unauthorized access.

The second aspect is "confidentiality": bankers, like doctors and lawyers, are custodians of their clients' information. They have a contractual duty to disclose it to third parties only in very narrowly defined circumstances, principally with customer consent and under legal compulsion.

But "privacy" now goes beyond "security" and "confidentiality". It is viewed as a comprehensive set of rights that give individuals a degree of control over personal information -- not only over how it is disclosed, but also how it is collected, processed, used, verified and corrected in the event of error.

Banks are "information intensive" businesses, which need access to private personal information to do business and which need to maintain public confidence to stay in business. We are fully aware that our policies and information practices must reflect the modern concept of "privacy". Our experience with "security" and "confidentiality" is a solid foundation to build on.

It is essential not only that privacy be protected and public trust maintained, but, for the economic reasons I have discussed, that various nations' privacy requirements be reasonably uniform.

Clearly, the numerous privacy laws passed in Europe and North American are

not perfectly uniform. The key differences concern enforcement methods and the scope of regulation -- whether it applies, for example, to the public sector alone or to the private sector as well, to automated information systems or also to manual files.

More important than these differences, however, is the fact that the legislation to date reflects the same basic policy concern -- to give the individual a reasonable degree of control over personal information and impose corresponding rules on governments and corporations.

Outside of Canada, it may not be realistic to implement a scheme for making all privacy laws perfectly uniform. But it is quite realistic to identify what they have in common. Herein, as I suggested earlier, lies the value of the O.E.C.D. Guidelines. They set out core principles of privacy protection that should be seen as the common measure of many countries' privacy codes, whether they are imposed by legislation, regulatory policy or voluntary compliance.

In these circumstances, the practical questions to ask are: Can countries "harmonize" their privacy policies without having identical regulatory frameworks? Can individuals be assured that their personal information will enjoy the same basic protection abroad that it enjoys in the home country? My answer to both is a qualified "yes".

One qualification is the attitude of governments. As I have suggested, they must maintain a disciplined separation of privacy from trade issues. This is an essential condition for harmonization.

Another qualification is the attitude of the private sector. Business must understand that rigorous and uniform codes for protecting privacy can go a long way towards reducing the need for government regulation. It will also reassure citizens that multinational data flows are not threatening.

Of course, no government will abandon its concern and leave the private sector to decide how and under what conditions

personal information will flow across borders. But political pressure for the "first" privacy laws will be relieved... if corporations act to put meat on the skeleton of the O.E.C.D. guidelines... if multinationals begin to adopt uniform industry-wide or inter-corporate codes... if companies show the public that they are taking specific measures to reduce the risk that personal data will be mishandled in foreign data bases and processing centres. Such private sector actions are the raw material for more formalized harmonization of laws by governments as time goes on.

The multinational private sector should not underestimate its influence. It has long experience in operating in different political, legal and regulatory environments. It also has the knowledge of information technology which governments need to formulate law and policy.

Government action to harmonize privacy protection is most practical when it is taken by neighbouring countries, with similar legal systems. We are already seeing this in Europe. It seems to me that Canada and the U.S. could follow suit and negotiate a North American "model agreement" covering such matters as information retrieval rights, equivalent protection, mutual enforcement of court orders and agreed procedures for determining court jurisdictions when citizens of the two countries are involved.

Canada cannot negotiate international agreements unless the federal government and provinces adopt a uniform approach to privacy protection. We simply cannot arrive at the negotiating table with our governments pulling in anywhere from two to eleven different directions on such a fundamental human rights issue.

There is also, as I mentioned before, a purely domestic imperative for uniformity. Canada should preserve its competitive market in the field of information laws and services. Governments should consider the business cost implications

of differing regulatory regimes. Even today, minor differences in such areas as interest rate calculations and financial reporting requirements can force corporations to develop entirely different computer programs and software applications for different jurisdictions. The same problem could arise if privacy protection requirements diverge from one government to the next.

As a businessman, I do not have strong feelings about the precise definition of federal/provincial jurisdictional boundaries in the field of privacy. What is terribly important is that all Canada's governments start by "agreeing to agree" on a uniform, nationwide set of privacy rights for all Canadians. My experience is that Canadians expect to have identical privacy rights, no matter where they live or where in future they might move within Canada. If my perception is right, governments would have to be politically motivated to take a shared approach.

If agreement on privacy rights can be reached, we can then turn to the question of the respective roles of Ottawa, the provinces and territories and the private sector in ensuring that privacy rights are respected.

In attempting to arrive at a uniform regulatory framework, all governments should be alive to the role which the private sector can play. Corporations, industry associations and other private sector groups can assist government in ensuring that fundamental privacy protection principles are implemented effectively and evenly throughout the country. Effective self regulation, if it becomes integral to the enforcement of privacy rights, can assist the process of federal/provincial consensus building. For self regulation to be effective, it would have to reflect a national consensus on privacy.

Privacy protection is an important issue, one which requires extensive discussion by all interested parties. Thanks to this conference, it has been discussed in spades. Thank you for this opportunity to participate.

SUMMATION OF CONFERENCE BY RAPPORTEUR

CARL F. DOMBEK^{*}
Director, Legal Services
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In his remarks opening the Privacy Conference, the Honourable Norman W. Sterling, Q.C., Provincial Secretary for Resources Development, challenged us to respond to the issues created by rapidly changing and increasingly sophisticated technology systems and their impact on traditional values respecting privacy. He asked us to consider both the problems we face and the options available to us for their solution and also to think about developing standards which meet our needs and bring Canada into harmony with developing world-wide standards of data protection. This Conference has responded to that challenge with panels which have aired the many perspectives on these issues and their resolution.

The first Panel was entitled "Privacy: The Problems Defined". Speakers bringing the perspectives of the manufacturing, insurance and medical communities emphasized the legal and administrative problems privacy protection presents for information keepers. These include costs incurred when information contained in personal files is subpoenaed by third parties for use in civil actions; through litigation which might have been avoided if employers had access to employee records; and inefficiencies which result from prohibitions on the surveillance of employees.

In addition, the consequences of the release of business information through Government access to information legis-

lation was mentioned. All three panelists saw Government as the major threat to the informational privacy of individuals. This was particularly seen as true in the medical record area, where Government balances public interest concerns against individual privacy rights. Panelists saw privacy protection as not practiced in the private sector as adequate, with no additional regulations or legislation required.

Another Panel was created to deal with issues in the public sector. It was called "Access to Information: How Does This Relate to Privacy?".

In addressing this question, the Panel considered the search for balance between the need for privacy protection and access to information. Accordingly the first speaker canvassed the various mechanisms and quirks within Canadian statutory schemes, such as the resolution of these two competing claims through the exemptions, the exclusions and the third party intervention or reverse freedom of information procedure.

He identified the enormity of the problem of our global information society which will necessitate the development of a comprehensive and international "information law" to cope with this new information era.

Among the many issues raised was an assertion that data protection and access

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The editor gratefully acknowledges the assistance of the Conference's two Assistant Rapporteurs, Ms. Martha Fletcher and Ms. Liz Longworth, in the preparation of this Conference summary.

to information issues reflect long-standing societal conflicts over the redistribution of power between the individual and the state. Computer technology speaks a new language of power which comes from controlling the flow of information.

The call for data protection and freedom of information law reform is another example of the increasing demand by citizens for greater participation in decision-making. Using a Charter of Rights analogy, he reflected that such reform is part of a trend in Canadian legal culture towards codification of procedural entitlements. This may reflect the public's increasing distrust of large institutions and fear of the invasion of personal privacy. The resulting explicit rights to information are vital for effective participation in an information society.

In attempting to answer the question before the Panel, the next speaker gave a comparative account of data protection and privacy laws in West Germany, France, U.K., U.S.A. and Quebec. He isolated strengths and weaknesses of these schemes, emphasizing the need to make laws effective and to deal adequately with the public sector situation before turning one's attention to the private sector. For any data protection agency, he stressed, among other things, his preference for the agency to have advisory powers only and the need for the agency to concentrate on data protection rather than becoming overwhelmed by the access issue. The speaker also mentioned the necessity to avoid duplication of commissions and bureaucracy; the need for the agency to enjoy as much independence as is constitutionally possible, subject to an appropriate review mechanism; the need for effective organization of the agency, and the importance of talented and proper staffing. He continued by discussing the need to define the actual privacy interests to be protected; and he stressed the need for the agency to be empowered to receive complaints, initiate audits and inspections, and generally to be visible and seek to implement data protection laws in an effective manner.

Finally, the more technical problems involved in the integration of the two schemes (privacy and access) were addressed with some suggestions as to how one might reconcile the conflict between the two.

For the designers of legislation, there appear to be three policy problems: the first, the focus of conflict resolution, that is, which institutions (Courts, Legislature or Bureaucracy) decide the issue. Second is the substantive policy question as to what guidance can be given to the decision-maker to assist in resolving the conflict. Third are the technical problems of drafting to avoid conflicts within the statutory schemes, as is found in the Canadian Federal Access to Information and Privacy Acts.

After a comparative look at the U.S. law, it was concluded that the Canadian approach in effect leaves the resolution of this conflict within the discretion of public officials, thereby undermining access rights conferred by the Access to Information Act and depreciating the level of privacy afforded by the Privacy Act.

Despite the Canadian and U.S. approaches, the speaker believed that it is possible to articulate a number of precepts which could assist a decision-maker in resolving the access and privacy conflict. He proceeded to set out at least 10 principles, thereby illustrating that there is a practical solution to this whole question of achieving the appropriate balance in reconciling privacy protection with the freedom of information principle.

The question period concentrated on the appropriate role of the Privacy Commissioner; whether the Commissioner should or should not be a citizen's advocate; the need for more consciousness raising in data protection by the Commissioner initiating inspections of files; the need for increased publicity and education campaigns, and the importance of controversy as a solution to the lack of publicity.

A third Panel dealt with "Privacy: What the Private Sector Has Done". Both morning and afternoon private sector

sessions spoke on the question of what the private sector has done to respond to privacy concerns. The insurance industry, for example, collects less information and, in particular, less subjective information than in the past.

The industry provides for easy correction of its information and maintains tighter security on what is collected. Both individual corporations and industry associations were able to report on work done to achieve self-regulation through development and implementation of codes of fair information practices. Some commentators questioned the view that privacy was a real concern of citizens, arguing that dealings in the private sector are voluntary in any case. Others pointed out that while many small invasions of privacy were tolerable in isolation, the cumulative effect -- particularly when magnified through linkage of files -- is substantial and of widespread concern. As well, for most individuals, "opting out" of the information society is not a realistic possibility. Finally, self-regulation provides no means for dealing with the irresponsible firm or with those who are not members of industry associations and have no incentive to accept their codes. Therefore, discussions of regulatory options cannot be avoided.

In dealing with "Privacy: Some Practical Solutions", the other afternoon Panel tackled the privacy issue more directly by looking to other jurisdictions for some practical solutions. In the course of looking at the American legislation, the issue of computer-matching and computer crime security were discussed. Some of the recommendations were: to use computer technology in order to implement fair information practices and computer security; to recognize the necessity for follow-up audit or evaluation of policy and safeguards in the new statutes; and to improve upon drafting, such as by eliminating the routine use disclosure provision. The panelist suggested the establishment of an entity with the resources to implement these recommendations, as well as to embark upon long-range planning. He pointed out various situations, such as medical

research, where matching is legitimate so long as accompanied by safeguards. Stressing the importance of due process and verification procedures, it was concluded that it is still possible to use advanced technology, to have an efficient administration and yet still protect the privacy rights of citizens.

The issues under discussion in Saskatchewan where there is no statute were then examined, with reference to some of the options available in other jurisdictions. The desirability of finding an appropriate model which would avoid over-regulation by government, was expressed. Pointing out the need to think in terms of new forms of privacy, this speaker said that his concern was misuse of information, rather than with the fact of data collection per se. To illustrate his points, he drew on his Province's experience with the system of the Pathfinders Trail and Agritex Service. We then heard a detailed account of the Quebec access law which comes into effect this July. Quebec is the only province with data protection legislation. Five characteristics of the new law were identified.

1. The legal aspects, whereby freedom of information and data protection are guaranteed within the same Act,
2. The coverage of the Act is very extensive, affecting 3,600 agencies, as opposed to 140 in the Federal Act; it includes all Crown Corporations and covers confidential files in the federally "exempt" category,
3. Data linkage between agencies is regulated with the host agency restricted in releasing personal information to another unless under the terms of an agreement which has to be tabled in the Assembly,
4. The 3-member commission is a hybrid body with regulatory and advisory functions,
5. The distinguishing characteristic of the law will be its high degree of elaboration and resulting bureaucracy.

Another Panel was entitled "Privacy: Initiatives for the Private Sector". As the Chairman of this Panel noted, one objective of this Conference is to hear from representatives of the public -- those most affected by the changes leading to an information society. To that end representatives of labour and consumers discussed the issues of greatest importance to them, in effect challenging public and private sector data holders alike to find adequate responses to their concerns. For consumers, these include defining the balance between privacy and access to information; ensuring that transborder data flows do not rob Canadians of effective control of data-handling practices; and restricting information use to the purposes for which it was collected. In addition, it was suggested that we should encourage the development of "informed consent" which should be coupled with a right of refusal which does not exact onerous penalties for its exercise. For labour, major issues are the misuse of personnel information by employers, and the use of new technologies for surveillance of employees. For all panelists, a major issue is information use and collection by Government, and the use of the social insurance number as an all-purpose identifier. The final panelist, representing the Canadian Independent Computer Services Association, argued that the only solution for such problems is a legal one, as lack of effective sanctions merely gives economic advantage to the least scrupulous.

On May 24th, the delegates participated in a Panel entitled "Transborder Data Flow: Toward a Resolution for the Future: The Trends, the Issue".

The speakers discussed the impact of the development of significant levels of transborder data flow on the capacity of Canada's governments to achieve economic, cultural and human rights goals and on the means available to them to do so. The solution offered was for Canada to come to terms with its major trading partner, the United States.

Such discussions have begun with the current Canada/U.S. discussions of sec-

toral liberalization, where informatics is identified as a sector for such agreement. While the bilateral approach is seen as offering the best hope for actually achieving agreement, a number of issues need resolution. First, information is an input, not a sector, and as such, it affects all sectors. Thus, its effect in each sector must be assessed in the negotiation process. Other issues include control of carriage, acceptable forms of documentation, liability for defects, security of information, and extraterritorial effects of data protection laws. These negotiations will succeed only if the essential focus of agreement can be narrowed and there is the political will to create structures for adjustment of the agreement to meet the changing environment. Without a continental communication pact, Canada will lose its already weak position with regard to hardware technology and software. It is up to Canadian policy-makers to explore the opportunities to secure Canadian privacy, sovereignty and employment opportunities in the Information Age.

The delegates also heard from two excellent keynote speakers during the Conference. Federal Privacy Commissioner John Grace was able to report that the Federal Privacy Act is, in its first year of operation, working better than expected. Some 10,000 requests for information were received in the first six months, with 80% of applicants receiving at least some of the information requested. His Office has been used as a clearing house for questions regarding privacy practices as well.

Later, the Honourable David Waddington told the group that the United Kingdom Data Protection Bill, now before Parliament and soon to become law, was conceived in response to two important pressures: first, the growing public concern about the impact of automatic data processing on individual privacy, and secondly, the concern in the private sector that absence of a law would hamper data flows to the U.K. from European countries which adhered to the Council of Europe Convention on Data Protection. The British Bill covers only computerized data banks but includes both the public and private sectors. Data users will register their

data banks, and a Data Protection Registrar will oversee the operation and enforcement of the Act.

In conclusion, the delegates heard that Mr. Sterling would be introducing a Bill concerning Privacy and Access to Information held in Government data banks. The delegates are also aware that the Provincial Secretary is chairing an Inter-Provincial Minister's Conference, which will discuss the issues of privacy in the private sector. The delegates want to emphasize to the Ministers that it is important, in fact necessary, to continue consultation with the private sector at all stages prior to Government taking any final action on the subject.

As a final word, many delegates expressed their satisfaction that the Government was interested in this topic and they hoped that this interest would not wane. There was also a general expression of thanks to the Government for bringing the delegates together on May 23rd and 24th of this auspicious year.

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CONFÉRENCE INTERROVINCIALE DE MINISTRES SUR LA PROTECTION
DES RENSEIGNEMENTS PERSONNELS : MESURES POUR 1984

Document de travail sur la vie privée:

Projets pour 1984

Ontario

Toronto (Ontario)
Les 24 et 25 mai 1984



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provincial au
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MESSAGE DU MINISTRE :

Au cours de la dernière décennie, la protection de la vie privée a posé un problème majeur aux sociétés industrielle modernes. L'inquiétude est allée croissant à mesure que les citoyens se rendaient compte que le bouleversement technologique était tel qu'ils ne pouvaient compter sur leurs seuls efforts pour protéger les renseignements personnels les concernant.

La protection de notre vie privée est un droit auquel nous tenons tous et qui doit être respecté à tout prix. Aussi étrange que cela puisse paraître, ce droit n'a jamais été reconnu officiellement au Canada.

On trouvera dans ce document de travail un choix de propositions que les gouvernements qui cherchent une solution à ce problème pourront examiner. Il est également important que ces questions fassent l'objet d'une consultation avec le secteur privé.

Il est d'autant plus nécessaire, en effet, de répondre de façon uniforme aux préoccupations que suscite cette question que l'on prend davantage conscience du fait que les données recueillies sur un particulier peuvent être conservées et, en fait, utilisées dans une autre province ou un autre pays.

Dans le secteur privé, certaines compagnies ont réagi en soumettant la manipulation des renseignements personnels à des codes visant à protéger leur caractère confidentiel. Les compagnies qui utilisent ce type de code sont cependant davantage l'exception que la règle et il semble qu'il soit nécessaire d'établir des normes pour empêcher toute ingérence dans le droit des citoyens à la protection de leur vie privée.

De nombreux pays d'Europe ont mis en place des lois sur la protection des données personnelles et, en 1981, le Conseil de l'Europe a adopté une convention de protection des données signée par tous les pays participants.

Les inquiétudes suscitées par le droit à la protection des renseignements sur ordinateurs sont très réelles et il est essentiel d'aborder le problème de façon responsable, en collaboration avec l'industrie. J'espère que ce document de travail constituera un premier pas important vers l'élaboration d'un code de protection de la vie privée des citoyens.

Le Secrétaire provincial
au Développement des ressources

Norman Sterling

Norman Sterling, c.r.

TABLE DES MATIÈRES

	Page
Synopsis	iii
 PARTIE I : COMPRENDRE LES PROBLÈMES	 1
Introduction	1
Pratiques loyales en matière d'information	4
Perceptions du public	7
Réponse du secteur privé	9
 PARTIE II : LOIS RÉGISSANT LES BANQUES DE DONNÉES DU SECTEUR PUBLIC	 11
Canada	11
Provinces	12
États-Unis	14
Royaume-Uni	14
République fédérale de l'Allemagne occidentale	15
Suède	16
Conseil de l'Europe	16
Organisation pour la coopération et le développement économique	17
Résumé	17
 PARTIE III : SOLUTIONS POSSIBLES POUR LE SECTEUR PRIVÉ	 20
Résumé des problèmes	20
Portée du document	22
Politiques possibles	24
Résumé	32

SYNOPSIS

Les progrès de la technologie des ordinateurs et des télécommunications ont soulevé des questions nouvelles sur la protection des renseignements personnels - c'est-à-dire le droit qu'ont les particuliers de savoir quelles informations sont recueillies à leur sujet et la façon dont elles sont communiquées à des tiers. Ce document de travail passe en revue un certain nombre de graves problèmes que risque de poser l'impact de l'évolution technologique sur la protection de la vie privée et examine divers moyens de les résoudre.

Les problèmes présentés portent sur la protection des données, la qualité des données, les limites de la divulgation, la défense de la sécurité, les coûts et l'accès individuel aux fichiers de renseignements personnels dans les banques de données informatisées. De récents sondages de l'attitude du public semblent indiquer que les particuliers sont très préoccupés par les effets de l'ordinateur sur leur vie privée et par les institutions qui recueillent trop de renseignements personnels à leur sujet.

Le secteur public a commencé à aborder ces problèmes par le biais de divers textes de loi qui définissent, pour les banques de renseignements des ministères et organismes gouvernementaux, les pratiques loyales en matière d'information et prévoient comment les appliquer. On peut citer, à titre d'exemple, la Loi fédérale sur la protection des renseignements personnels et le Bill 65 du Québec, assortis l'un et l'autre de bureaux mis en place pour veiller au respect des normes établies dans ce domaine et étudier les plaintes individuelles pour pratiques déloyales en matière d'information.

En Ontario, un projet de loi est à l'étude. Il s'agit du Privacy and Access to Information Bill, qui vise à imposer aux banques de données du gouvernement provincial des pratiques loyales en matière d'information. La loi serait accompagnée d'un bureau chargé de la faire appliquer et d'un autre qui serait habilité à recevoir les plaintes des citoyens en la matière.

En Europe, la protection des données est à l'ordre du jour et des pays comme le Royaume-Uni, l'Allemagne de l'Ouest et la Suède ont des programmes législatifs qui prévoient l'enregistrement des fichiers de données et régissent les pratiques en matière d'information dans les secteurs public et privé.

Le secteur privé, conscient du problème, a mis au point des méthodes internes et, dans certains cas, des codes volontaires visant à protéger les renseignements personnels suivant certains principes courants dans la législation sur le sujet. Aux États-Unis, Warner-Amex Cable Communications Inc. a mis au point un code qui protège le caractère confidentiel des données recueillies sur ses clients.

L'Association canadienne de télédistribution est en train d'élaborer un code de protection visant une auto-réglementation similaire.

Dans le passé, ce sont les bureaux de crédit, assujettis dans la plupart des provinces à des lois sur la divulgation des données relatives au crédit, qui ont été les principaux manipulateurs de renseignements personnels dans le secteur privé. On enregistre cependant un accroissement des fichiers informatisés de renseignements personnels dans toutes sortes de secteurs, notamment les institutions financières, les services de télédistribution, les services vidéotex, les services informatiques, ainsi qu'une multitude d'autres secteurs commerciaux et non commerciaux. Le particulier n'a pas de garantie concrète contre l'ingérence dans ces fichiers.

Si elles veulent aborder le problème de la protection de la vie privée de façon uniforme, les diverses instances canadiennes vont se heurter à un certain nombre de questions légales. À qui appartiennent les données personnelles contenues dans les fichiers? Comment peuvent-elles être légalement protégées? Les lois en vigueur sur la protection des données personnelles doivent-elles être amendées en fonction de l'évolution technologique? Qui est responsable de la divulgation improprie ou non autorisée de renseignements personnels? Et puis, bien sûr, il faudra faire face à l'éternel problème du partage des compétences entre les gouvernements fédéral, provinciaux et territoriaux, si l'on veut harmoniser les règlements à mesure qu'ils sont édictés et éviter les conflits entre les lois.

On estime généralement que les droits individuels, y compris les droits à la protection de la vie privée, ne relèvent de la compétence législative exclusive ni du gouvernement fédéral ni des gouvernements provinciaux, mais sont plutôt déterminés par la Constitution canadienne, et plus particulièrement par les articles 91 et 92 de l'Acte de l'Amérique du Nord britannique. Bien qu'un certain nombre de gouvernements aient déjà des lois sur la question, il est important que ces initiatives se poursuivent et, peut-être, s'amplifient.

Ce document de travail analyse quatre méthodes de résolution des problèmes que pose, pour la vie privée des citoyens, l'accroissement de la manipulation informatisée des données personnelles dans le secteur privé. Au lieu de passer en revue la gamme entière des mesures possibles, il en privilégie trois qu'il estime correspondre à la situation canadienne.

Le gouvernement a joué un rôle important dans la promotion et l'adoption de la technologie de la microélectronique et des communications. Maintenant que la technologie est acceptée dans tous les secteurs de l'économie, il lui incombe d'accorder son soutien à l'établissement de normes de protection de la vie privée.

La première approche possible consisterait, pour le gouvernement, à encourager l'auto-réglementation dans les industries qui font une utilisation importante de données. Cela pourrait prendre la forme de codes volontaires sur le modèle de ceux qu'utilisent certaines compagnies dont on parlera plus loin. Les tentatives d'auto-réglementation les plus dignes d'intérêt contiennent également des dispositions sur les pratiques loyales en matière d'information dans les contrats avec les clients. Le gouvernement pourrait travailler, de concert avec une association représentative de chaque secteur industriel, à mettre au point un code de respect de la vie privée correspondant à ce secteur. Cela produirait une série de codes volontaires conçus en fonction des exigences de chaque secteur.

Deuxièmement, le gouvernement pourrait aussi édicter des lois qui définissent les pratiques loyales en matière d'information et prévoient une pénalité en cas d'infraction. L'application de la loi pourrait être volontaire et ne concerner que les établissements qui choisissent de s'y conformer, ou obligatoire pour tous les secteurs qui font un usage important de données.

Une troisième méthode consisterait à établir un système d'enregistrement et de réglementation auquel seraient assujettis les utilisateurs de données. Ce système pourrait définir les principes majeurs de manipulation de l'information; instituer un registraire ou un commissariat pour administrer le système d'enregistrement et veiller à ce que les principes soient respectés; et établir le droit des particuliers touchant l'accès, la correction et la non-divulgaration des données personnelles. On trouve des modèles de systèmes d'enregistrement dans la loi sur la protection des données (Data Protection Bill) du Royaume-Uni et dans les organes mis en place par les provinces canadiennes pour réglementer les renseignements personnels en matière de crédit.

Enfin, la combinaison de ces trois façons de procéder fournirait d'autres possibilités dont une qui mérite l'attention, à savoir une combinaison des systèmes d'auto-réglementation et d'enregistrement décrits ci-dessus. Aux fins de ce document, on a donné à cette méthode le nom d'"enregistrement volontaire". Les associations professionnelles pourraient élaborer des codes correspondant à leur secteur, veiller à ce que leurs membres s'y conforment et se faire les médiateurs des plaintes des particuliers. Ceci pourrait se faire en consultation avec un commissariat public à la protection de la vie privée qui tiendrait également un registre de toutes les associations et compagnies participantes.

PARTIE I : COMPRENDRE LES PROBLÈMES

Introduction

Il y a longtemps que le droit de l'individu à la protection de ses données personnelles et de sa vie privée - c'est-à-dire le pouvoir qu'il a de déterminer en grande mesure quels renseignements sont recueillis à son sujet et de quelle manière ils peuvent être utilisés par des tiers - constitue un aspect légitime d'une société libre. Or, bien que l'importance du respect de la vie privée soit généralement reconnue, son application dépendait en grande partie de l'impossibilité technologique où l'on se trouvait de procéder à une surveillance étendue et de tenir des dossiers détaillés sur un grand nombre d'individus. Cette barrière technologique n'existe plus. Il faut donc envisager d'établir des normes, si l'on veut que les données personnelles soient protégées dans le cadre du progrès technologique.

Pour prendre de telles mesures de sécurité, il est essentiel de s'accorder sur la définition de ce qu'on appellera des pratiques loyales en matière d'information. Ces pratiques fixeraient des limites générales à la façon dont les renseignements personnels sont recueillis, conservés et utilisés. Elles chercheraient aussi à équilibrer le droit de l'individu à la protection de sa vie privée avec les valeurs sociales et économiques également importantes d'ouverture et d'efficacité. Aux fins de ce document, on entendra par données personnelles les fichiers de renseignements sur une personne dans lesquels elle est identifiée par son nom ou facilement identifiable par d'autres moyens.

Le but de ce document de travail est de sensibiliser le lecteur aux problèmes majeurs que soulève l'impact possible de l'évolution technologique sur le droit des personnes à la protection de leur vie privée et de discuter des solutions possibles à leur apporter.

Les dernières innovations technologiques en matière d'ordinateurs et de télécommunications permettent de traiter et de relier des informations conservées dans diverses banques de données facilement, rapidement, et à bas prix. Au cours des vingt-cinq dernières années, la tenue des dossiers dans le secteur public et le secteur privé est passé de l'âge de la paperasse lente et encombrante, où les renseignements sont enregistrés à la main, au système de fichiers éclairs efficaces et lisibles par une machine. Cette évolution a eu un certain nombre de conséquences notables sur la vie privée des individus.

Tout d'abord, l'extraction de dossiers lisibles par une machine se fait plus rapidement et la mise à jour est plus facile et plus anonyme. Ce qui était autrefois un ensemble de documents dont la date était clairement apparente est devenu écran d'ordinateur. De plus, les dossiers informatisés sont facilement accessibles en des lieux éloignés de l'organisme. Ce qui est encore plus important, cependant, c'est qu'on peut facilement fusionner les dossiers informatisés, ce qui permet d'assembler dans un seul fichier un certain nombre de pièces traitant du même sujet ou de la même personne. Cela peut se faire au sein de l'organisme qui a recueilli les données, mais ces dernières peuvent également être transmises sans difficulté à un autre utilisateur d'informations et combinées avec d'autres dossiers en provenance d'autres sources, à des fins non prévues par les personnes touchées par le processus initial de collecte de l'information. Ceci est plus facile à accomplir si l'on a un numéro d'identification, mais le manque de numéro n'est pas un obstacle suffisant pour empêcher ce type de compilation. En outre, le réseau de télécommunications entre les détenteurs des dossiers permet de partager les fichiers constitués par un organisme à une fin bien précise avec d'autres utilisateurs qui poursuivent des fins bien différentes. On donne à ce processus le nom de raccordement des données.

L'impact possible, sur la protection de la vie privée, de la facilité avec laquelle les dossiers sont extraits, partagés et fusionnés se trouve multiplié par le nombre et la diversité des sources de renseignements informatisés sur les individus. Matériellement, les ordinateurs sont passés en vingt ans de l'état de machine de la taille d'une pièce à celui d'appareil facile à poser sur un bureau. Les coûts de l'équipement et du traitement ont baissé à la même allure. Pour se servir des anciens ordinateurs, il fallait avoir une formation poussée; les machines actuelles, qualifiées d'aimables pour l'utilisateur, peuvent être utilisées avec un minimum de formation et de connaissances spécialisées.

Alors qu'autrefois, seules les institutions importantes, comme les gouvernements, disposaient des ressources nécessaires pour utiliser l'ordinateur de façon efficace, la tenue de dossiers informatisés est maintenant la norme dans presque tous les secteurs de l'activité humaine. Autrefois, le recensement national était l'unique compilation de renseignements divers sur les citoyens. Il est maintenant possible de rassembler des données encore plus diverses sur les individus, en partageant les informations entre les détenteurs de dossiers. Au gouvernement, le dossier de chaque personne comprend, entre autres, des renseignements sur l'état-civil, l'impôt, le casier judiciaire, la santé, la conduite automobile, les dossiers militaires et les dossiers scolaires.

Dans le secteur privé, les renseignements sur les individus qui figurent dans les dossiers informatisés sont encore plus variés. Parmi les plus connus, citons le dossier de solvabilité. Le public se préoccupe cependant de la constitution d'autres dossiers informatisés, notamment dans les secteurs des assurances, de la banque et des télécommunications. Il y a en outre beaucoup d'utilisateurs de données encore inconnus du public comme les détaillants qui ont un système de cartes de crédits ou les services d'achat par télévision, les magazines qui gardent les listes d'abonnement, les organismes de bienfaisance, commerciaux,

professionnels ou communautaires et autres prestataires de services. Maintenant que la télédistribution entre dans une phase d'échange où il va être possible de se servir de la télévision pour procéder à ses opérations bancaires, faire ses achats, effectuer des sondages instantanés et commander les émissions de télévision sur la base du coût unitaire, le secteur privé va accumuler des quantités encore plus importantes de renseignements sur les individus.

Cette collection toujours grandissante de données personnelles est un élément quasi inévitable de la vie en ce dernier quart du vingtième siècle. Comme concluait, en 1977, une commission d'étude sur la protection de la vie privée aux États-Unis :

Il est maintenant courant de demander à un particulier de donner des renseignements sur lui-même qui seront utilisés par des étrangers invisibles, lesquels prendront des décisions à son sujet qui influenceront sur sa vie quotidienne. De plus, comme la majorité des services offerts par les organismes sont, ou du moins sont considérés comme des nécessités, le particulier n'a guère le choix et doit se soumettre à toutes les exigences des organismes qui lui posent des questions.

Pratiques loyales en matière d'information

Cette menace pour la protection de la vie privée a suscité un certain nombre de tentatives visant à fixer les limites appropriées et à protéger le caractère confidentiel des renseignements personnels conservés dans les systèmes informatisés. Les principes généraux énoncés dans la convention du Conseil de l'Europe sur la protection des individus en matière de traitement automatique des données personnelles sont un bon exemple des efforts tentés par les gouvernements pour établir des lignes directrices qui reconnaissent les avantages de la tenue de dossiers informatisés tout en respectant la valeur que les particuliers accordent à leur vie privée.

Ces lignes directrices sont basées sur les principes suivants :

- i) Les renseignements personnels doivent être recueillis et traités de façon loyale et légitime.
- ii) Les renseignements personnels doivent être conservés à une fin ou à des fins spécifiées et légitimes.
- iii) Les renseignements personnels ne doivent pas être utilisés ni divulgués d'une manière incompatible avec lesdites fins.
- iv) Les renseignements personnels doivent être adéquats, pertinents et d'une portée qui ne dépasse pas les fins spécifiées.
- v) Les renseignements personnels doivent être exacts et, le cas échéant, remis à jour.
- vi) Les renseignements personnels ne doivent pas être conservés sous une forme où figure le nom de la personne plus longtemps que nécessaire pour les fins spécifiées.
- vii) Le sujet concerné par les renseignements doit avoir accès aux données qui existent sur son compte et être habilité à les corriger ou à les radier si les dispositions légales régissant lesdites données n'ont pas été respectées.
- viii) Des mesures de sécurité appropriées doivent être prises contre l'accès sans autorisation, l'altération ou la dissémination, la perte accidentelle ou non autorisée des données.

Ces directives reconnaissent qu'il est nécessaire, pour l'individu, que les renseignements recueillis à son sujet le soient avec son consentement; que ce consentement soit basé sur une pleine et précise compréhension des fins auxquelles les renseignements sont recueillis; qu'il n'en soit pas fait usage sans son consentement; qu'il puisse avoir accès au fichier pour s'assurer que les renseignements sont corrects;

qu'en cas de désaccord sur l'exactitude des renseignements, sa version des faits soit notée et que des tiers n'aient pas accès à son dossier sans qu'il le sache ou le permette, sauf si c'est exigé par la loi.

Même s'il y a accord général sur ces principes dans les deux secteurs public et privé, il existe un certain nombre d'obstacles à leur réalisation. L'un de ces obstacles est le principe voisin de la liberté de l'information. Si un individu a le contrôle absolu sur toutes ses données personnelles, ce droit peut constituer un obstacle important au droit qu'ont les autres de se renseigner sur les activités gouvernementales. Il faut de toute évidence trouver un moyen terme.

Le problème du vol des données informatiques constitue un autre obstacle. Il s'agit du cas où des données sont saisies ou extraites sans la permission du détenteur du fichier de renseignements. On a suggéré d'apporter des amendements au Code criminel qui établiraient des infractions spécifiques en la matière et permettraient de résoudre en partie le problème. Les détenteurs de banques de données devraient cependant continuer à prendre des précautions raisonnables, au sein de leur organisation, pour faire en sorte que soit respecté le caractère confidentiel des renseignements personnels, et que les employés qui les manipulent se conforment aux mesures de sécurité nécessaires.

Le problème du passage des données d'un territoire à l'autre constitue un troisième obstacle en puissance. Il s'agit des renseignements sur des particuliers qui sont extraits et traités dans un autre territoire où la protection de la vie privée n'est pas assurée comme il se doit par le secteur privé ou par la loi. Ici aussi, l'efficacité et la valeur de la liberté de l'information risquent d'entrer en conflit avec les normes sur la protection des données personnelles. Certains de ces problèmes dépassent la portée de la présente discussion, car ils relèvent du gouvernement fédéral.

Perceptions du public

Des sondages récents indiquent que l'inquiétude devant la menace que représente, pour la protection des renseignements personnels, l'utilisation grandissante des ordinateurs n'est pas l'unique apanage des professeurs, des futurologues et des technocrates. Des sondages effectués pour le compte du gouvernement de l'Ontario en 1980 et 1983¹ indiquent qu'une majorité considérable de citoyens de l'Ontario sont préoccupés par l'impact des ordinateurs sur leur vie privée. En outre, en 1983, environ la moitié d'entre eux estimaient qu'il incombe essentiellement au gouvernement de protéger le caractère confidentiel des renseignements personnels et financiers dans notre société. Trente-huit pour cent des citoyens pensaient que c'était au secteur privé de protéger leur vie privée. Le premier sondage, effectué en 1980, révélait en outre qu'une minorité considérable de citoyens estimaient que les institutions comme le gouvernement, les dispensateurs de crédit, les employeurs et les compagnies d'assurance demandent aux particuliers trop de renseignements personnels et financiers.

Dans le même ordre d'idée, un sondage Gallup² de 1981 sur les attitudes envers la microélectronique demandait à la population de classer par ordre d'importance treize problèmes associés aux ordinateurs et à la technologie de l'information. La protection de la vie privée et le respect du caractère confidentiel des renseignements personnels venaient loin en tête et étaient mentionnés par 63% des personnes interrogées. Le nombre de gens ayant un pouvoir de contrôle sur l'information, problème étroitement lié au premier, était mentionné par 45 pour cent des personnes interrogées, ce qui classait cette préoccupation en troisième position. C'étaient les personnes qui déclaraient

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1. Voir Ontario Consumer Issues 1980 et Préoccupations du consommateur ontarien en 1983
 2. A Gallup Survey of Electronic Technology, mars 1981, The Gallup Organisation, Inc.

avoir des connaissances en microélectronique et les titulaires d'emplois dans le secteur de la vente, du travail de bureau et de l'administration qui se montraient le plus préoccupées par la protection de la vie privée. On demandait également aux personnes interrogées de se projeter cinq ans en avant et de dire si elles pensaient que leur vie privée serait alors "envahie ou gravement perturbée" par l'une ou plusieurs de dix-sept organisations, personnes morales ou individus. Le niveau d'inquiétude était élevé. Cinquante pour cent ou plus des personnes morales suivantes risquaient, à leur avis, d'envahir leur vie privée : une agence d'évaluation de la solvabilité, un ordinateur ou une banque de données, une compagnie d'assurance, le gouvernement fédéral ou provincial, une banque, une personne qui pourrait s'ingérer dans leur courrier et une autre qui communiquerait avec elles par téléphone. Une fois de plus, ce sont les personnes qui déclaraient connaître la microélectronique qui étaient le plus susceptibles de prévoir une invasion de leur vie privée.

Un sondage effectué en novembre 1982 à London, Ontario, par le professeur Neil Vilmar de l'université Western Ontario³, pour le compte du gouvernement de l'Ontario, a révélé des niveaux pareillement élevés d'inquiétude pour la vie privée devant le développement des services interactifs de télédistribution. Plus des deux-tiers des personnes interrogées pensaient que leur vie privée était moins protégée au Canada que dix ans plus tôt. Parmi les types d'informations considérées les plus délicates et nécessitant le plus de protection, on citait les comptes en banque, le contrôle des entrées et des sorties de chez soi (câblotransmission utilisée par certains systèmes de sécurité), les dossiers de crédit, le salaire personnel et les dossiers médicaux. Les résultats indiquaient que près de la moitié des personnes interrogées s'inquiétaient de l'usage que faisait le gouvernement des renseignements recueillis, mais un pourcentage encore plus élevé était préoccupé par le secteur privé. Soixante-douze pour cent de l'échantillon

3. Neil Vedmar, Privacy and Two-way Cable Television: A Study of Canadian Public Opinion, Université Western Ontario, 1983.

donnaient la faveur à une réglementation par le gouvernement, une majorité de cinquante-deux pour cent accordant un rôle en la matière aux deux gouvernements fédéral et provincial. L'étude révélait également que la plupart des gens estimaient que les organismes publics et privés demandent davantage de renseignements personnels que nécessaire.

Réponse du secteur privé

Comme l'indiquent les directives de l'Organisation pour la coopération et le développement économique,⁴ l'auto-réglementation des industries et des compagnies qui font un usage important de renseignements personnels constitue un des principaux moyens de protéger efficacement la vie privée des citoyens. À cet égard, plusieurs compagnies ont relevé le défi de l'auto-réglementation en établissant des pratiques internes bien pensées correspondant à la définition courante des pratiques loyales en matière d'information établie, entre autres, par l'OCDE.

Bell Canada, par exemple, est une corporation importante qui manipule une quantité considérable d'informations personnelles nécessairement recueillies aux fins de facturation. Les politiques de la compagnie considèrent tous les renseignements de l'abonné à l'exception de son nom, de son adresse et de son numéro de téléphone, comme des informations privées conservées uniquement pour répondre aux besoins au sein de la compagnie. Les données personnelles ne peuvent pas être vendues et les employés de Bell sont informés que tout renseignement sur les abonnés, où qu'ils soient recueillis, sont strictement confidentiels. En fait, l'existence, le contenu ou la nature de toute communication de l'abonné ne doit pas être communiqué à un tiers sauf pour se conformer à une ordonnance légale. Dans le cas d'une telle ordonnance, Bell avisera l'abonné, à moins qu'on ne le lui défende spécifiquement.

4. Organisation pour la coopération et le développement économique, Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data.

La Banque de Montréal est un autre utilisateur de données personnelles qui a mis au point des pratiques spécifiques de protection des renseignements personnels et publié des informations à ce sujet. Les données recueillies et gardées en dossier constituent le minimum nécessaire pour dispenser le service requis. Au sein de la compagnie, l'accès à ce type de renseignement est étroitement contrôlé et aucune information n'est généralement fournie à un tiers sans le consentement du client, sauf pour se conformer à la loi ou à une ordonnance du tribunal. Les demandes de carte de crédit, les prêts personnels et les hypothèques, cependant, comprennent une clause de consentement général ou de renonciation qui autorise la banque à divulguer des renseignements sur le client à des tiers dans certaines circonstances. La pratique qui consiste à faire signer des renonciations aux clients, courante dans les institutions financières, a été critiquée dans le passé au nom de la protection de la vie privée du client.

Le secteur de la télédistribution du Canada a chargé son association, l'Association canadienne de télédistribution, de mettre au point un code général de protection des renseignements personnels qui lui permettra de s'auto-réglementer. Un sous-comité de l'association, sur le modèle du code hautement respecté de l'institution américaine de câblodiffusion Warner Amex, est en train d'élaborer un code correspondant à la scène canadienne. On prévoit que ce code sera accepté et appliqué par les compagnies membres de l'association alors qu'elles mettent au point les services interactifs qu'elles vont offrir au public. L'établissement d'un code avant le développement des services présente un avantage majeur, car les systèmes peuvent être conçus à l'avance pour renforcer la sécurité informatique et les possibilités de protection des données.

Il n'en demeure pas moins que les compagnies pourvues d'un code de protection volontaire constituent l'exception plutôt que la règle. Il est donc clair que la vaste manipulation informatisée des renseignements personnels devra être assujettie à un système de normes quelconque pour veiller à ce que la vie privée des citoyens ne soit pas violée.

PARTIE II : LOIS RÉGISSANT LES BANQUES DE DONNÉES
DU SECTEUR PUBLIC

Le nombre de lois visant, au Canada et à l'étranger, à répondre aux problèmes que posent l'accès à l'information et la protection des renseignements personnels va croissant. La plupart sont d'origine récente, ce qui est révélateur de leur rapport étroit avec le développement de la technologie de l'information et de la rapidité avec laquelle les innovations risquent de soulever de graves questions en matière de protection de la vie privée. Dans cette section seront passées en revue un certain nombre de solutions, dont certaines ne s'attachent qu'aux banques de données gouvernementales alors que d'autres visent également le secteur privé.

Canada

Au niveau canadien national, l'effort porte essentiellement sur l'élaboration de pratiques loyales en matière d'information dans les fichiers relevant de la compétence fédérale. La Loi sur la protection des renseignements personnels, adoptée en 1982 et proclamée en 1983, confère aux citoyens canadiens et aux résidents permanents le droit d'être informés, à certaines exceptions près, de l'existence de dossiers à leur sujet, d'examiner, de corriger et de remettre en question les renseignements qui s'y trouvent; de savoir quel usage a été fait du dossier; et d'être consultés avant qu'il en soit fait un autre usage. Une loi voisine, la Loi sur l'accès à l'information a été édictée pour maximaliser la compatibilité entre l'accès à l'information et la protection de la vie privée. La Loi sur la protection des renseignements personnels exige que soit publié un répertoire annuel des fichiers fédéraux de données personnelles et crée un Commissaire à la protection de la vie privée habilité à jouer le rôle du médiateur en cas de litige, à enquêter pour veiller à ce que la loi soit observée par les détenteurs de fichiers et à exercer son droit de recours en révision devant la Cour des décisions gouvernementales touchant lesdits renseignements.

Provinces

La Nouvelle-Écosse et le Nouveau-Brunswick ont édicté l'une et l'autre des lois sur la liberté de l'information vers la fin des années 1970. La loi de Nouvelle-Écosse énumère les types de documents auxquels on peut avoir accès plutôt que d'établir un principe général d'accès, alors que le Nouveau-Brunswick établit des principes généraux, avec possibilité d'appel à un ombudsman et inspection à huit-clos des documents contestés par les tribunaux.

La Nouvelle-Écosse a adopté des lois sur la liberté de l'information et la protection des renseignements personnels en 1981. La première loi dresse la liste des ministères, conseils, organismes et commissions visés et l'autre fait de la violation, par une personne, de la vie privée d'un individu un tort exécutoire sans preuve de dommage.

Le Québec traite en même temps la liberté d'information et la protection des renseignements personnels dans une loi adoptée en 1982 et destinée, comme la loi fédérale, à protéger les données personnelles contenues dans les fichiers gouvernementaux, tout en permettant l'accès aux documents des organes publics. Ces organes comprennent non seulement le gouvernement provincial et tous ses ministères et organismes, mais aussi les municipalités (gouvernement et institutions gouvernementales aux paliers du comté, de la région et de la ville), les établissements d'enseignement et les institutions de santé et de services sociaux. La loi exige que la commission d'accès à l'information compile aux fins de circulation un répertoire des dossiers tenus par les organes publics et que les demandes d'information reçoivent gratuitement une réponse dans les 20 jours qui suivent leur réception. La commission a des pouvoirs divers de supervision, d'enquête et de décision.

Dans le passé, l'Ontario a sérieusement étudié les questions d'accès à l'information et de protection des renseignements personnels. Il en est résulté un projet de loi, le Privacy and Access to Information Bill, visant à définir les pratiques loyales en matière d'information et à les rendre obligatoires dans les fichiers de renseignements personnels du gouvernement. Le projet prévoit d'établir un bureau de la protection des données qui aurait le pouvoir d'élaborer et de faire appliquer des normes auxquelles seraient assujettis les systèmes de données personnelles. Ces normes exigeraient, entre autres, que soit limitée la collecte de données au minimum essentiel à l'opération d'un programme; que les renseignements personnels soient normalement recueillis directement auprès du sujet et que la raison de la collecte lui en soit communiquée; et, de manière générale, que les renseignements recueillis ne soient pas divulgués sans le consentement de l'individu. Feraient exception à la règle relative à la divulgation les cas où celle-ci ne représenterait pas une ingérence injustifiée dans la vie privée de l'individu et où elle serait nécessaire à l'administration de programmes gouvernementaux autorisés ou au meilleur intérêt de l'individu ou de la société. Les particuliers auraient le droit d'accéder à leur dossier et d'y apporter des corrections, le détenteur des données étant tenu de notifier les utilisateurs passés du dossier de tout amendement à celui-ci. Les particuliers auraient également le droit de porter plainte devant le bureau séparé d'un commissaire.

En 1968, la Colombie-Britannique a adopté une loi sur la protection des renseignements personnels, ce qui en a fait le premier gouvernement du Commonwealth à établir un recours indépendant en cas d'ingérence déraisonnable et injustifiée dans la vie privée d'un individu. Cette loi a été suivie par des textes semblables au Manitoba et en Saskatchewan. Cependant, aucune de ces lois ne traite expressément de l'utilisation inappropriée ou non autorisée des renseignements personnels donnés volontairement à une autre personne ou à une autre institution et intégrés dans un fichier informatisé.

De plus, le coût du recours aux tribunaux risque de faire hésiter l'individu à se prévaloir de ses droits, les coûts du procès dépassant souvent ses avantages possibles.

États-Unis

La loi américaine sur la protection des renseignements personnels date de 1974 et vise les données personnelles contenues dans les fichiers gouvernementaux. Il s'agit essentiellement d'un texte à fonctions domestiques qui établit des normes pour l'administration des fichiers de données. À cet égard, il exige du gouvernement qu'il fasse rapport sur l'existence de fichiers de renseignements personnels, qu'il veille à la qualité des données qui s'y trouvent, qu'il permette aux sujets de ces fichiers d'y avoir accès, d'utiliser uniquement les données aux fins pour lesquelles elles ont été recueillies et de tenir un dossier de la divulgation des informations aux personnes concernées. Les réponses aux questions ne sont pas limitées dans le temps et la loi s'applique d'elle-même dans la mesure où la personne lésée saisit les tribunaux de sa plainte plutôt que de s'adresser à une instance séparée. Les États-Unis ont également une loi sur la liberté de l'information qui confère des droits d'accès relativement plus étendus que la loi sur la protection des renseignements personnels.

Royaume-Uni

Le parlement britannique est en train d'élaborer une loi sur la protection des données qui vise les fichiers informatisés de renseignements personnels des deux secteurs public et privé. Ce projet établit un registraire et un tribunal de protection des données; exige l'enregistrement (à certaines exceptions près) des fichiers de renseignements personnels publics et privés; prohibe la divulgation non autorisée des informations; permet aux particuliers d'avoir accès aux données détenues dans les fichiers enregistrés et les habilite à amender les dossiers et à chercher compensation auprès des tribunaux en cas de préjudice.

Le registraire est habilité à annuler l'enregistrement des fichiers de renseignements personnels qui contreviennent aux principes de protection desdites données et peut empêcher le transfert de renseignements du Royaume-Uni dans un pays qui ne respecte pas les normes minimales en la matière. Cette loi permettra au Royaume-Uni d'adhérer à la convention du Conseil de l'Europe sur la protection des données.

République fédérale de l'Allemagne occidentale

La République fédérale allemande n'a pas de loi générale sur l'accès à l'information mais un réseau hautement développé de dispositions visant à protéger les renseignements personnels et à sauvegarder la vie privée des individus. Il s'agit d'une part de la loi fédérale sur la protection des renseignements personnels et des lois des états sur le même sujet qui intègrent les principes de protection des données du Conseil de l'Europe. La loi fédérale vise également les fichiers de renseignements personnels du secteur public fédéral et du secteur privé à l'échelle du pays, alors que les lois des états régissent les pratiques en la matière de leurs gouvernements respectifs. C'est aux directeurs des institutions gouvernementales qui créent et utilisent les fichiers de renseignements personnels qu'il incombe en priorité de veiller au respect des lois. De même, les lois du palier fédéral et des états prévoient la mise en place du bureau d'un commissaire à la protection des données personnelles, chargé de superviser et de conseiller les organismes qui manipulent des fichiers de renseignements personnels et de faire rapport au parlement une fois par an. Le succès de ce système de protection ne vient pas des pouvoirs de coercition de la commission à la protection des renseignements personnels mais du degré élevé de sensibilisation du public et du gouvernement aux pratiques appropriées en matière de manipulation des données.

Suède

La Suède a été le premier pays du monde à promulguer des lois sur l'accès à l'information et la protection des renseignements personnels. L'accès aux renseignements détenus par le gouvernement est réglementé par la loi sur la liberté de la presse et la loi sur la protection des renseignements personnels qui, ensemble, permettent l'accès général dans le cadre de certaines exceptions spécifiques et limitées. Le caractère confidentiel de l'information est garanti par plusieurs textes législatifs dont le plus important est la loi sur les données personnelles de 1973. Cette loi a créé une commission d'inspection des renseignements personnels qui réglemente la collecte et l'utilisation des fichiers informatisés dans les deux secteurs public et privé. La fonction majeure de la commission est donc de délivrer des permis à tous les fichiers de renseignements détenus par le gouvernement ou par les utilisateurs du secteur privé et d'édicter des règlements qui régissent leur usage. On peut appeler des décisions de la commission au ministre de la justice et au cabinet, mais le nombre de ces appels n'a jamais été élevé. De façon générale, le système qui régit l'utilisation des renseignements fait passer la protection de la vie privée avant les considérations d'économie et d'efficacité.

Conseil de l'Europe

Le Conseil de l'Europe a préparé une convention pour la protection des individus relativement au traitement automatisé des renseignements personnels, qui vise à assurer le respect du droit de l'individu à la protection de sa vie privée. Elle requiert des états signataires qu'ils intègrent dans leurs lois nationales les principes de base définis dans la convention à savoir : emploi de pratiques loyales en matière d'information; limites imposées à l'utilisation et au contenu des fichiers en fonction des fins auxquelles les données sont recueillies; exactitude; identification minimale des individus; limites imposées aux types de données à traiter; mesures de sécurité appropriées;

et procédures pour permettre aux sujets des dossiers d'identifier ces derniers, de les examiner et de les corriger. La convention confirme également le droit qu'ont les états signataires de refuser que des renseignements personnels soient envoyés dans des pays n'offrant pas une protection similaire.

Organisation pour la coopération et le développement économique. (OCDE)

Le Conseil de l'OCDE a établi des directives régissant la protection des renseignements personnels qui constituent les normes minimales que doivent respecter ses membres. Sur le modèle de la convention du Conseil de l'Europe, l'OCDE souscrit aux principes suivants: limite de la collecte, qualité des données, spécification des fins auxquelles elles sont utilisées, limitation de l'utilisation, mesures de sécurité, ouverture, participation individuelle, responsabilité. Tout en énonçant spécifiquement que la protection des renseignements personnels ne doit pas servir d'alibi pour limiter leur passage au-delà des frontières, l'OCDE convient que les pays membres doivent empêcher toute exportation de données qui circonviendrait les lois nationales sur la protection des renseignements personnels ou dans des pays ne respectant pas en substance les principes auxquels il souscrit. Les pays membres sont invités en particulier à : adopter des lois nationales appropriées; encourager et soutenir l'auto-réglementation; conférer aux individus un moyen raisonnable d'exercer leurs droits; prévoir des sanctions adéquates; et veiller à ce que les sujets des dossiers ne fassent pas l'objet de discriminations injustes.

Résumé

On a pu voir dans ce qui précède que les diverses lois édictées par différentes autorités couvrent un très vaste territoire. La plupart souscrivent à un ensemble similaire de pratiques et de principes loyaux en matière d'information.

Bien qu'il y ait divergence sur des points de détail, lorsqu'il s'agit par exemple de décider si les renseignements recueillis doivent être "pertinents" et recueillis "directement", la plupart des lois confèrent à l'individu le droit d'accès et de correction et exercent un certain contrôle sur la transmission des renseignements personnels à un tiers. Au-delà de ces similarités de base, cependant, ces lois varient énormément au niveau de leur portée et de leur application.

Aux fins de ce document, il paraît utile de prendre acte de trois des modèles discutés ci-dessus. À une extrémité du spectre, la loi américaine sur la protection des renseignements personnels est un exemple de loi qui définit certains droits individuels mais n'établit pas d'organe séparé pour en assurer le respect. Aux termes de cette loi, c'est à l'individu de saisir les tribunaux de ses griefs.

Un second modèle, illustré par la Loi canadienne sur la protection des renseignements personnels, établit un organe d'exécution nanti de pouvoirs d'enquête et de contrôle. Les particuliers lésés peuvent porter plainte auprès du Commissaire à la protection de la vie privée qui peut également prendre l'initiative d'une plainte et exercer le recours en révision pour refus de communication. La nouvelle loi du Québec est assez semblable, bien que son champ d'application soit plus vaste et couvre notamment les municipalités, les conseils scolaires, les universités et les organismes de santé et de service social, en plus des ministères du gouvernement. La loi du Québec confère à sa commission le pouvoir considérable de surveiller les pratiques en matière d'information, d'instruire les plaintes, de faire enquête et de rendre des ordonnances de force exécutoire.

Le troisième modèle, à l'autre extrémité du spectre, est illustré par le système d'enregistrement du Royaume-Uni décrit ci-dessus. Sous certains aspects, ce système de réglementation est plus fort que les deux modèles

précédents, car il requiert l'enregistrement formel des fichiers de renseignements personnels et confère au registraire des pouvoirs substantiels d'enquête et d'application, notamment le pouvoir de refuser d'enregistrer un fichier si son utilisateur ne se conforme pas aux dispositions de la loi. Les systèmes d'enregistrement suédois et allemand vont encore plus loin et constituent deux modèles supplémentaires.

PARTIE III : SOLUTIONS POSSIBLES POUR LE SECTEUR PRIVÉ

Résumé des problèmes

La première partie de ce document exposait la menace que constitue pour la vie privée des citoyens la manipulation automatisée des renseignements personnels. Il s'en dégage un certain nombre de notions concurrentes. La plupart des gens conviennent qu'il faut pondérer les avantages de l'ordinateur en matière d'efficacité et de vitesse par l'évaluation de ce qu'il en coûte au niveau de la protection de la vie privée des individus. En termes d'économie, les institutions commerciales sont donc soumises à des pressions conflictuelles qui visent d'une part à profiter de toutes les économies que permet de réaliser la technologie nouvelle et, d'autre part, à garantir à l'individu la protection des renseignements personnels le concernant.

Bien qu'il soit difficile de généraliser, il appert que le coût de la protection minimale de la vie privée n'est pas très élevé par rapport aux économies que la nouvelle technologie permet de réaliser au niveau de l'efficacité. De plus, ces coûts de "protection" sont souvent minimisés si l'on fixe des normes ou des procédures avant d'introduire les nouveaux systèmes.

Les problèmes exposés dans la partie I peuvent se résumer comme suit :

- 1) Collecte des données : Les renseignements personnels recueillis par les utilisateurs de données⁵ doivent-ils se limiter à ce qui relève spécifiquement

5. Les définitions suivantes sont utilisées dans ce document : Utilisateur de données : Institution qui recueille et manipule des fichiers de renseignements personnels sur les particuliers. Sujet des données : Individu qui fait l'objet de la collecte de données.

de l'objectif de l'utilisateur et à ce qui a fait l'objet du consentement éclairé du sujet? Faudrait-il exiger en outre que les renseignements personnels soient recueillis directement auprès du sujet auquel ils se rapportent? Les principales déclarations de principe sur le problème de l'obtention des données sont généralement assorties d'une clause à l'effet que ces dernières doivent être recueillies en toute justice et légitimité, à une fin elle-même légitime. Ce document part du principe que la légitimité ne constitue pas un problème et s'attache à la pertinence de la collecte des données et au consentement éclairé du sujet.

- 2) Qualité des données : Les renseignements personnels recueillis par les utilisateurs de données doivent-ils être assujettis à des exigences d'exactitude, de complétude et de remise à jour?
- 3) Limitations de la divulgation : La communication, par les utilisateurs de données, de renseignements personnels à des tiers doit-elle se limiter aux renseignements requis pour atteindre l'objectif spécifié par l'utilisateur? Feraient exception à cette règle les cas où il y a consentement du sujet ou ceux qui tombent sous le coup de la loi.
- 4) Mesures de sécurité : Les utilisateurs de données doivent-ils obligatoirement veiller à la sécurité physique des fichiers de renseignements personnels?
- 5) Accès individuel : Les particuliers doivent-ils avoir le droit de vérifier l'existence de dossiers personnels à leur sujet, d'inspecter et de recevoir une copie des renseignements qui y sont contenus et de demander que soient modifiées les données erronées ou incomplètes?

- 6) Coûts : Si l'on donne aux citoyens le droit d'accès, de modification et de non-divulgation, les coûts d'application de ces droits ne doivent pas être rédhibitoires. Les règlements qui confèrent à des organismes d'application de la loi le pouvoir quasi judiciaire de régler les griefs constituent un moyen de conférer aux particuliers des droits susceptibles d'être respectés.

Cette section analyse un certain nombre de solutions aux problèmes qui se posent dans le secteur privé et passe en revue les points forts et les faiblesses de chacune. On part du principe que la protection des renseignements personnels est une exigence légitime et que les principes énoncés par la convention du Conseil de l'Europe sur la protection des données (résumés en page 5) représentent une référence raisonnable pour l'évaluation des solutions proposées.

Portée du document

Ce document vise les deux secteurs, public et privé. Du point de vue du citoyen individuel, les deux secteurs représentent une menace pour la protection de la vie privée. Bien qu'en Amérique du Nord, les lois sur la protection des renseignements personnels n'aient visé jusqu'à présent que le secteur public, des pays comme le Royaume-Uni⁶, l'Allemagne de l'Ouest et la Suède ont des programmes législatifs qui couvrent les deux secteurs.

La question du choix se présente alors entre l'auto-réglementation et la réglementation gouvernementale. On examinera ci-dessous les avantages et les inconvénients de l'auto-réglementation comme moyen de garantir que le secteur privé adopte des pratiques loyales en matière d'information.

6. Au moment de la rédaction de ce rapport, le projet de loi britannique avait été accepté en seconde lecture

Il est une autre question que les gouvernements doivent régler. Il faut en effet décider si les programmes de réglementation doivent couvrir seulement les fichiers informatisés de renseignements personnels ou s'appliquer à tous les dossiers, aussi bien manuels qu'informatisés. Le principe majeur du livre blanc⁷ du Royaume-Uni sur la protection des données est que l'automatisation présente de nouvelles menaces pour la protection de la vie privée, à cause de la vitesse et de la facilité avec laquelle les renseignements personnels peuvent maintenant être communiqués à un coût relativement peu élevé. Cela sous-entend que l'argent et les efforts que demande le transfert manuel des renseignements freinent d'eux-mêmes la divulgation non autorisée.

En revanche, les lois sur la protection des données qui visent les dossiers du secteur public d'Amérique du Nord ne distinguent pas entre fichiers informatisés et dossiers manuels. Ces lois confèrent à l'individu certains droits en matière de protection des renseignements personnels dans les deux types de dossier. On peut se rendre compte de l'importance des dossiers manuels dans le cas, par exemple, des archives médicales.

Il faut également se demander si tous les fichiers de renseignements personnels devraient être couverts par la réglementation imposée ou l'auto-réglementation, ou seulement ceux dont la taille dépasse un certain seuil. Certains insistent sur le fait que seuls les utilisateurs de données d'une certaine importance devraient être assujettis à la réglementation, les coûts d'application constituant un fardeau plus élevé pour les organismes moins importants. L'exemption des banques de données plus petites, cependant, laisserait ces renseignements sans protection et affaiblirait par là même les droits individuels.

7. Data Protection: The Government's Proposals for Legislation, ministère de l'Intérieur, Royaume-Uni, avril 1982.

Politiques possibles

Cette section passe en revue quatre solutions possibles : un code volontaire de protection des renseignements personnels, un code aux termes d'une loi, un système d'enregistrement et de réglementation, et une méthode combinant les éléments des trois premières propositions. Cette liste n'a pas la prétention d'être exhaustive mais vise à encourager la discussion des diverses solutions qui semblent raisonnablement correspondre à la situation canadienne.

1) Code volontaire de protection des renseignements personnels : Une fois admise la légitimité de la protection des données personnelles, les gouvernements pourraient inciter les industries spécifiques (par le biais de leurs associations) et les corporations qui font un usage important de données à élaborer des codes volontaires qui intégreraient les principes importants qui figurent habituellement dans les lois sur la protection de la vie privée. Des compagnies comme Warner-Amex aux États-Unis et IBM en Europe ont déjà mis au point des directives pour la protection des renseignements personnels contenus dans leurs fichiers. Au Canada, l'Association canadienne de télédistribution est en train d'élaborer un code.

En 1981, Warner-Amex Cable Communications Inc. a mis au point un code visant à protéger le caractère confidentiel des renseignements personnels que la compagnie compile sur les abonnés au service de télédistribution. Dans ce code, la compagnie s'engage à garantir la sécurité matérielle et le caractère confidentiel des renseignements sur les abonnés et à informer ces derniers de toutes les fonctions des services de télédistribution qui donnent lieu à une collecte de renseignements. Un accord passé avec chaque abonné énonce les conditions d'utilisation des renseignements et prévoit que nulle autre donnée individuelle ne sera recueillie sans le consentement de l'individu. Le code donne également à l'abonné le droit d'examiner son dossier et d'exiger la correction des données erronées.

Le code est en train de s'intégrer aux contrats et aux accords de franchise passés avec les abonnés, ce qui le rend auto-applicable et confère à l'abonné certains droits. En théorie, tout individu qui estime que son droit à la protection de sa vie privée a été violé peut tenter des poursuites pour bris de contrat.

Commentaires : On peut résumer de la manière suivante les avantages et les inconvénients de la méthode du code volontaire en réponse aux problèmes posés par la protection des renseignements personnels;

- . Elle ne garantit pas que la majorité des institutions qui font un usage important de données adopteront volontairement un code.
- . Elle ne propose pas de système formel d'application ni de respect des codes (à l'exception du pouvoir limité qu'a le particulier d'intenter des poursuites pour bris de contrat, dans le cas où le code est assorti d'un accord écrit entre l'utilisateur et le sujet des données).
- . Les coûts et difficultés qu'elle entraîne pour les utilisateurs de données sont minimaux.
- . Elle présente une flexibilité maximale, les codes pouvant s'adapter à l'évolution de la technologie et des exigences du public.
- . Elle ne garantit pas de droits substantiels à l'individu en cas de litige sur l'accès, la correction ou la divulgation.
- . L'adoption de divers codes volontaires par divers secteurs et compagnies industriels risque d'aboutir à un manque d'uniformité de la protection offerte aux individus.

2) Code imposé par la loi : À mi-chemin entre les codes volontaires et les règlements gouvernementaux plus traditionnels, une autre méthode propose d'édicter une loi qui définirait les pratiques loyales en matière d'information et prévoirait des pénalités pour toute

infraction à ces pratiques. Lesdites pratiques pourraient couvrir la collecte et la qualité des données, les limites à la divulgation, les mesures de sécurité et l'accès individuel tels que définis ci-dessus. Cette loi permettrait d'intenter une action délictuelle au civil et constituerait essentiellement une méthode d'auto-réglementation du problème sans le secours d'un organe d'exécution.

Certains auteurs ont suggéré que les exigences du public en matière de protection de la vie privée viennent de ce que les parlements et tribunaux n'ont pas déjà élaboré ce type de loi⁸. On convient généralement que la common law en vigueur dans les pays du Commonwealth n'offre pas en soi de protection de la vie privée.

Les lois sur la protection des renseignements personnels édictées par la Colombie-Britannique, la Saskatchewan et le Manitoba n'ont pas souvent été utilisées et, de l'avis général, ne proposent pas de remède substantiel au type de problème que pose à l'individu la manipulation automatisée des données personnelles.

Une loi prévoyant un code de protection des renseignements personnels pourrait prendre l'une des deux formes suivantes :

- a) Une loi qui permettrait l'acceptation volontaire du code. Les règlements afférents à ce type de loi enregistreraient les industries ou compagnies qui souhaitent se conformer au code. Les participants volontaires seraient ainsi identifiés dans leur secteur comme des compagnies conscientes des problèmes de protection de la vie privée.
- b) On peut aussi songer à une loi qui exigerait le respect du code. Elle s'appliquerait à tous les utilisateurs de données ou seulement aux fichiers de renseignements personnels dont l'importance dépasse un certain seuil.

8. Voir par exemple, Roger Noll, "Regulation and Computer Services", dans M. Dertouzos et J. Moses, The Computer Age: A Twenty-Year Review, (Cambridge: MIT Press, 1980) et Murray Rankin, Privacy and Technology: A Canadian Perspective (Canadian Institute for Legal Studies, Cambridge University, 1983).

Commentaires: On trouvera ci-dessous un résumé des points forts et des faiblesses de cette méthode:

- . Elle ne garantit pas qu'une majorité des utilisateurs de données se conformera volontairement au code. Seule la version obligatoire d'un tel statut garantit la participation d'une majorité des utilisateurs de données.
- . Le remède proposé aux particuliers est coûteux et compliqué. Il ne serait sans doute pas souvent utilisé, les coûts pour le particulier dépassant presque toujours les avantages possibles du remède. Il s'ensuit que cette approche ne confère pas de droits substantiels à l'individu relativement à l'accès, la correction, la divulgation des renseignements et la résolution des litiges.
- . Les coûts et les complications pour les utilisateurs de données sont minimaux.
- . La méthode offre un degré élevé de flexibilité, les pratiques loyales en matière d'information étant définies dans la loi en termes généraux qui ne gêneraient pas l'application de nouvelles techniques.
- . Si le recours des particuliers au remède prévu reste limité, ce type de loi n'aura pas d'impact majeur sur les pratiques en matière d'information. La version obligatoire de ce type de loi, cependant, peut favoriser une certaine uniformité dans la collecte générale des données et les pratiques générales en matière de divulgation.

3) Enregistrement et réglementation : Une autre solution possible au problème serait que les gouvernements édictent des lois qui exigent l'enregistrement des fichiers de renseignements personnels, donnent aux individus des droits d'accès et de correction bien définis; réglementent la collecte de renseignements personnels et leur divulgation à des tiers; garantissent la sécurité des données; et établissent un registraire habilité à faire enquête et à faire appliquer la loi. L'exigence d'enregistrement pourrait s'appliquer aux institutions qui constituent des fichiers informatisés de renseignements personnels.

C'est là, fondamentalement, la méthode adoptée par le Royaume-Uni dans le projet de loi sur la protection des données (Data Protection Bill) présenté dans la deuxième partie de ce document. Ce texte institue un système d'enregistrement et d'application de la loi à l'intention des usagers de fichiers informatisés de renseignements personnels. Bien que le système d'enregistrement s'applique également au secteur public et au secteur privé, sa structure fondamentale peut servir de modèle utile aux fins de discussion.

Dans ce modèle, le répertoire public des utilisateurs de données sensibilise les individus à l'existence des fichiers informatisés de renseignements personnels et aux objectifs qu'ils visent. L'utilisateur de données doit s'identifier, dire quels renseignements il utilise, d'où ils proviennent, à qui ils sont communiqués et à quelles fins ils sont utilisés. Le registraire a le pouvoir de faire enquête, d'inspecter les dossiers et d'exiger des modifications au système. Dans les cas extrêmes, il peut refuser l'enregistrement pour non-conformité aux termes des grands principes de protection des renseignements personnels prévus par la loi. Étant donné les pouvoirs étendus du registraire, ce type de loi institue un processus d'appel à un tribunal indépendant composé d'experts en droit et en informatique.

Le texte proposé par le Royaume-Uni donne également à l'individu le droit d'accès aux renseignements personnels; le droit à la compensation pour préjudice causé par l'utilisation de données erronées, la perte de données et la divulgation non autorisée ainsi que le droit de recours aux tribunaux pour demander la rectification ou la radiation des données incorrectes. C'est au particulier de saisir les tribunaux de sa plainte en cas de violation de ses droits individuels pour exiger le respect de la loi ou réclamer des dommages-intérêts.

D'autres dispositions du même texte permettent au gouvernement de restreindre le transfert de certaines catégories de renseignements dans des pays spécifiés où la protection des données ne fait pas l'objet d'une réglementation aussi stricte, d'autoriser l'établissement de règlements pour régir certaines catégories de données personnelles comme l'origine raciale, les appartenances politiques et les croyances religieuses; et d'exempter des dispositions de la loi les collectes de données effectuées aux fins de recherches, si les individus ne sont pas identifiables.

Les commentaires suivants ne s'attachent qu'aux caractéristiques générales d'un système d'enregistrement de ce type tel qu'il serait appliqué au secteur privé. Il ne s'agit pas d'une évaluation de l'ensemble du texte.

Commentaires : Les avantages et inconvénients de cette méthode peuvent se résumer comme suit :

- . Elle prévoit aux termes de la loi la protection des renseignements personnels recueillis par les utilisateurs les plus importants et l'assortit d'un mécanisme chargé de faire observer ladite loi.
- . Elle confère à l'individu des droits légaux d'accès et de correction ainsi que de protection contre la divulgation à des tiers. En cas de litige, cependant, la défense de ces droits peut s'avérer coûteuse pour l'individu qui doit s'adresser aux tribunaux.
- . Elle impose de nouveaux règlements au secteur privé, c'est-à-dire des coûts supplémentaires aux utilisateurs.
- . Elle permet une certaine souplesse car les principes de protection des données sont généraux tout comme les pouvoirs du registraire, ce qui leur permet de s'adapter à l'évolution de la technologie et des pratiques en matière d'information.
- . Le système d'enregistrement et les pouvoirs d'exécution auraient un effet marqué sur les pratiques en matière d'information.

Les systèmes d'enregistrement sont courants dans les lois sur la protection des renseignements personnels des autres pays européens. On a donné, dans la deuxième partie, une brève description des lois de l'Allemagne de l'Ouest et de la Suède, sans doute les deux exemples les plus dignes d'intérêt.

L'inconvénient majeur de ce modèle, du point de vue de l'individu, est ce qu'il lui en coûte de s'adresser au tribunal pour faire respecter ses droits. Un autre système d'enregistrement pourrait comporter, pour le citoyen, une possibilité d'appel à un registraire ou à un commissaire dont les ordonnances auraient force exécutoire pour l'utilisateur de données. Ceci résoudrait le problème du coût rédhibitoire pour le particulier.

De nombreuses provinces canadiennes ont édicté des lois qui réglementent la collecte et la divulgation des renseignements personnels en matière de crédit. En Ontario, par exemple, la loi sur les renseignements concernant le consommateur enregistre les bureaux de crédit, réglemente la collecte, la conservation et la divulgation des renseignements en matière de crédit et confère à l'individu le droit d'accès à son dossier de crédit personnel. Le registraire est habilité à révoquer ou à refuser l'enregistrement dans certaines circonstances, auquel cas le candidat peut faire appel à un tribunal. Les modèles utilisés par les provinces pour réglementer les renseignements en matière de crédit pourraient fournir une orientation au système d'enregistrement envisagé pour les utilisateurs de fichiers de renseignements personnels.

4. Enregistrement volontaire : On pourrait envisager d'autres possibilités en combinant les trois approches ci-dessus. Une méthode digne d'intérêt consisterait à combiner les deux systèmes d'auto-réglementation et d'enregistrement. Les associations industrielles pourraient élaborer des codes de protection des renseignements personnels qui correspondent à leur secteur, veiller à ce que

leurs membres honorent lesdits codes et servir de médiateur en cas de plaintes de la part des citoyens. Ceci pourrait se faire en consultation avec un bureau public de la protection de la vie privée qui tiendrait également un registre de toutes les associations et compagnies membres.

Commentaires : On trouvera ci-dessous un résumé des points forts et des faiblesses de ce type de méthode :

- . Comme dans le modèle d'auto-réglementation, cette méthode ne garantit pas que la majorité des utilisateurs de données adopteront volontairement le système d'enregistrement.
- . Elle établit un système de surveillance visant à encourager les compagnies et organismes participants à observer le code. Bien que cette approche puisse avoir beaucoup de poids, elle ne prévoit pas d'autorité formelle en matière d'observation ni d'exécution.
- . Elle entraîne des coûts supplémentaires pour les utilisateurs de données.
- . Elle offre un niveau de flexibilité élevé et permet à l'industrie et à l'organisme de coordination de s'adapter à l'évolution de la technologie et des pratiques en matière d'information.
- . Elle ne garantit pas de droits concrets à l'individu en cas de litige sur l'accès, la correction ou la divulgation. L'organe d'instruction des plaintes des associations professionnelles pourrait cependant jouer un rôle de médiation.
- . Bien que l'adoption de différents codes par différents secteurs crée certaines variations au niveau des normes sur la protection de la vie privée, l'organisme de coordination pourrait viser l'uniformité sur les questions importantes comme le droit de l'individu à l'accès, à la correction et à la non-divulgation.

Résumé

On s'est efforcé dans cette section de comparer l'efficacité de plusieurs méthodes qui pourraient être utilisées pour résoudre les problèmes de la protection des renseignements personnels dans le secteur privé. Plutôt que de passer en revue toutes les approches possibles, y compris les systèmes gouvernementaux les plus stricts d'enregistrement et de délivrance de permis, ce document s'est attaché aux méthodes qui semblent convenir davantage à la scène canadienne.

On trouvera à la page suivante un tableau comparatif des quatre méthodes décrites ci-dessus. Les critères utilisés pour les comparaisons sont basés sur l'analyse précédente en fonction du thème majeur de toute discussion sur les choix en matière de réglementation : l'équilibre entre les coûts pour l'industrie et l'établissement de droits individuels ou de mesures de protection pour les citoyens. Les termes "bas", "moyen" et "élevé" cherchent uniquement à donner une idée des valeurs relatives de chaque système.

ÉVALUATION DES SOLUTIONS POSSIBLES

SOLUTIONS

CRITÈRES DE BASE	CODE DE PROTECTION VOLONTAIRE	CODE IMPOSÉ PAR LA LOI	ENREGISTREMENT ET RÉGLEMENTATION	ENREGISTREMENT VOLONTAIRE
Coûts pour l'utilisateur de données	Bas	Bas	Moyens à élevés	Moyens
Flexibilité	Élevée	Moyenne	Moyenne	Élevée
Droit du particulier à l'accès, à la correction et à la non-divulgaration	Sans garantie	Droits garantis par version obligatoire de la loi	Droits légaux pour les particuliers	Pas de garantie
Droits du particulier en cas de litige	Aucun	Coûteux et difficile à appliquer pour le particulier	Coûteux à appliquer d'autres systèmes d'enregistrement pourraient pallier ce problème	Aucun
Uniformité des pratiques en matière d'information	Difficile à assurer	Possible dans version obligatoire	Encourage uniformité	Certaine uniformité possible
Efficacité pour le développement de normes générales de protection	Basse à moyenne	Basse à moyenne	Potentiel élevé	Moyenne

DOCUMENT: 860-154/008

INTERPROVINCIAL CONFERENCE OF MINISTERS ON PRIVACY:
INITIATIVES FOR 1984

Statement by the Hon. Norman Sterling, Chairman of the
Interprovincial Conference on Privacy
and Electronic Data Protection

Chairman



Toronto, Ontario
May 24-25, 1984



Provincial
Secretary for
Resources
Development

Whitney Block
Queen's Park
Toronto, Ontario
M7A 1A2
416/965-7721

STATEMENT by The Hon. Norman Sterling, Chairman,
Interprovincial Conference on Privacy
and Electronic Data Protection

Mr. Sterling stated that the Governments represented at the Interprovincial Conference on Privacy had a useful discussion concerning the protection of personal information in both the public and private sectors.

It was generally agreed that it was desirable to have Provinces work together on the issue of privacy and electronic data protection. Mr. Sterling said that Ontario would take the lead in setting up an Interprovincial group of officials to exchange information on the topic and work towards a set of principles to guide the treatment of personal information in computerized data banks.

Mr. Sterling also said that Ontario would be maintaining contact with interested representatives of the private sector on steps being taken by them to protect personal information in computerized data banks.

He said that on the receipt of proposals, ministers would consider a further ministerial meeting.

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CONFÉRENCE INTERPROVINCIALE DE MINISTRES SUR LA PROTECTION
DES RENSEIGNEMENTS PERSONNELS : MESURES POUR 1984

DÉCLARATION de l'honorable Norman Sterling, président
Conférence interprovinciale sur la vie privée et la
protection des données informatisées

Président



Toronto (Ontario)
Les 24 et 25 mai 1984



Provincial
Secretary for
Resources
Development

Whitney Block
Queen's Park
Toronto, Ontario
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DECLARATION de l'honorable Norman Sterling, président
Conférence interprovinciale sur la vie privée et la protection des
données informatisées

M. Sterling a déclaré que les représentants des gouvernements qui ont participé à la Conférence interprovinciale sur la vie privée ont eu des discussions utiles au sujet de la protection des renseignements personnels dans les secteurs public et privé.

Les participants ont généralement convenu qu'il était souhaitable que les provinces oeuvrent de concert en matière de protection de la vie privée et des données informatisées.

M. Sterling a précisé que l'Ontario prendrait l'initiative en instituant un groupe interprovincial de fonctionnaires chargés d'échanger des renseignements sur la question et de tenter d'établir un ensemble de principes qui servirait de guide pour le traitement des renseignements personnels contenus dans les banques de données informatisées.

M. Sterling a également signalé que l'Ontario restera en contact avec des représentants intéressés du secteur privé afin d'être au courant des mesures prises par ceux-ci pour protéger les renseignements personnels contenus dans les banques de données informatisées.

Enfin, il a ajouté qu'après avoir été saisis des propositions les ministres envisageront la tenue d'une autre réunion ministérielle.

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252

INTERPROVINCIAL CONFERENCE OF MINISTERS ON PRIVACY:
INITIATIVES FOR 1984

CONFÉRENCE INTERPROVINCIALE DE MINISTRES SUR LA PROTECTION
DES RENSEIGNEMENTS PERSONNELS : MESURES POUR 1984

TORONTO

May 24-25, 1984

Les 24 et 25 mai 1984

LIST OF PUBLIC DOCUMENTS

LISTE DES DOCUMENTS PUBLICS

DOCUMENT NO. N° DU DOCUMENT	SOURCE ORIGINE	TITLE TITRE
860-154/004	Ontario	Discussion Paper on Privacy: Initiatives for 1984 ✓ Document de travail sur la vie privée : Projets pour 1984
860-154/008	Chairman	✓ Statement by The Honourable Norman Sterling, Chairman of the Interprovincial Conference on Privacy and Electronic Data Protection
	Président	✓ Déclaration de l'honorable Norman Sterling, président de la Conférence interprovinciale sur la vie privée et la protection des données informatisées

INTERPROVINCIAL MEETING OF MINISTERS
RESPONSIBLE FOR PENSIONS

Final Agenda



TORONTO, Ontario
June 5, 1984

INTERPROVINCIAL MEETING OF MINISTERS
RESPONSIBLE FOR PENSIONS

TORONTO (Ontario)

June 5, 1984

Final Agenda

1. Opening Remarks
2. Employment Pension Plan Reform
 - I) Issues which appear furthest from consensus, and require clear Ministerial direction
 - Membership of Full-Time Workers
 - Membership of Part-Time Workers
 - Inflation Protection
 - II) Issues which appear near consensus, but require further Ministerial direction from one or more jurisdiction
 - Vesting
 - Locking-in
 - Minimum Employer Contributions
 - Post-Retirement Survivor Benefits
 - Pre-Retirement Survivor Benefits
 - III) Issues on which consensus is apparent, but require Technical Clarification
 - Pensions are Divisible on Marital Breakdown
 - Sex Differentiation
 - Plan Surpluses
 - Flexible Retirement Age
 - LIRA/RPA

3. Employment Pension Plan Reform -- Process Concerns
4. Canada Pension Plan Benefits and Financing -- Process Concerns
5. Other Business and Adjournement of Conference

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DOCUMENT: 860-155/001

24

REUNION INTERPROVINCIALE DES MINISTRES
RESPONSABLES DES PENSIONS

Ordre du jour définitif



TORONTO (Ontario)

Le 5 juin 1984

REUNION INTERPROVINCIALE DES MINISTRES
RESPONSABLES DES PENSIONS

TORONTO (Ontario)

Le 5 juin 1984

Ordre du jour définitif

1. Allocution d'ouverture

2. Réforme des régimes de pensions d'emploi

- (I) Points qui font l'objet de beaucoup de divergences d'opinions et qui nécessitent une orientation précise de la part des ministres

Participation des employés à temps plein
Participation des employés à temps partiel
Protection contre l'inflation

- (II) Points sur lesquels un consensus semble imminent mais qui nécessitent néanmoins une orientation plus précise de la part d'un ou de plusieurs ministres

Acquisition d'avantages
Immobilisation des cotisations
Contributions minimales de l'employeur
Prestations au survivant après la retraite
Prestations au survivant avant la retraite

- (III) Points sur lesquels un consensus est manifeste mais qui nécessitent des précisions de caractère technique

Partage des pensions en cas de rupture du mariage
Différenciation d'après le sexe
Excédent des régimes
Souplesse sur le plan de l'âge de la retraite
Compte de pension enregistré à fonds immobilisés/
compte de pension enregistré

3. Réforme des régimes de pensions d'emploi - Inquiétudes concernant le processus
4. Avantages et financement du Régime de pensions du Canada - Inquiétudes concernant le processus
5. Autres questions et ajournement de la conférence

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DOCUMENT: 860-155/007

INTERPROVINCIAL MEETING OF MINISTERS
RESPONSIBLE FOR PENSIONS

Opening Remarks
by the Honourable Greg Kerr
Minister of Finance

Nova Scotia



TORONTO, Ontario
June 5, 1984

Opening Remarks
by the Honourable Greg Kerr
for the
Meeting of Provincial Ministers Responsible for Pensions
June 5, 1984
Toronto, Ontario

Mr. Chairman:

I am pleased to have the opportunity to discuss with my provincial colleagues this very current and important matter of pension reform.

The priority that the Nova Scotia Government attaches to the issues we are discussing today is evidenced by the creation of our own Royal Commission on Pensions nearly three years ago. Last December, the Commission's Report was released.

The Report of this Royal Commission has generated a considerable amount of interest among Nova Scotians, many of whom are becoming increasingly concerned about the pension system in Canada.

The Nova Scotia Government appreciates the study and degree of consensus regarding pension reform that has already evolved among many groups over the past several years. However, we felt that it was necessary to encourage full public input and reaction to our Royal Commission's Report prior to acting upon any of its recommendations.

For this reason, I made it clear to Nova Scotians when the Royal Commission's Report was released last December that the Government would not take a formal policy position on pension reform until sometime in the Fall of 1984. This affords Nova Scotians the opportunity to review and comment upon the Royal Commission's recommendations during the intervening period.

Indeed, next week a three day conference on Aging and the Aged will be held in the Province during which senior citizens from throughout Nova Scotia will be able to discuss a wide range of relevant issues. Of particular interest to the Government will be their discussions on retirement incomes and pensions. This will provide us with an important and informed source of public reaction to our Royal Commission's recommendations.

I am fully aware that several of my colleagues around this table have been faced with dealing with the recommendations of Royal Commission's on pension matters. I am sure, therefore, that you can all appreciate the Government's need to allow the citizens who will be affected by many of the major policy changes proposed by the Royal Commission to have ample opportunity to react and to provide input to my Government's policy making process.

For this reason, I will be unable to take a final position on any of the issues we will be discussing today. I do, however, welcome the opportunity to participate openly in discussions with you and will certainly benefit from your opinions and views. In fact, I can assure you that this meeting will provide another important dimension to Nova Scotia's decision-making process regarding private pension reform.

Now, I would like to repeat the high priority the Government of Nova Scotia attaches to the items on today's agenda. Our commitment is emphasized through our own Royal Commission and we have publicly stated our intention to introduce pension reforms in the near future. At the present time, however, we are affording all Nova Scotians an opportunity to have their say and to help in the planning of this important element in our individual and collective futures.

In conclusion, Mr. Chairman, I should add that we have shared the results of our Royal Commission's investigations with our sister provinces and the federal government and look forward to comment and advice from these jurisdictions as well before addressing ourselves to final goals.

Thank you,

THIS DOCUMENT IS ALSO AVAILABLE IN THE ENGLISH LANGUAGE

DOCUMENT : 860-155/007

Traduction du Secrétariat

RÉUNION INTERPROVINCIALE DES MINISTRES
RESPONSABLES DES PENSIONS

Allocution d'ouverture
de l'honorable Greg Kerr
Ministre des Finances

Nouvelle-Écosse



Toronto (Ontario)

Le 5 juin 1984

Allocution d'ouverture
de l'honorable Greg Kerr
à la réunion des ministres provinciaux
responsables des pensions
Le 5 juin 1984
Toronto (Ontario)

Monsieur le président,

Je suis heureux de pouvoir discuter avec mes homologues des autres provinces de l'importante question d'actualité qu'est la réforme des pensions.

La création de notre propre Commission royale sur les pensions, il y a à peu près trois ans, est la preuve de la grande priorité que le gouvernement du Nouveau-Brunswick accorde aux questions qui seront étudiées aujourd'hui. Cette commission a publié son rapport en décembre dernier.

Ce rapport a suscité beaucoup d'intérêt parmi les citoyens de la Nouvelle-Écosse dont bon nombre s'inquiètent de plus en plus du régime de pensions au Canada.

Le gouvernement de la Nouvelle-Écosse est conscient que la réforme des pensions fait l'objet d'études et d'un certain degré de consensus de nombreux groupes depuis plusieurs années. Nous avons toutefois jugé indispensable d'encourager le public à contribuer et à réagir au rapport de la Commission royale d'enquête avant de procéder à la mise en oeuvre de toute recommandation.

Pour cette raison, j'ai indiqué clairement aux citoyens de ma province, lorsque le rapport de la commission a été rendu public en décembre, que le gouvernement n'adopterait aucune position officielle en matière de réforme des pensions avant l'automne 1984. Dans l'intervalle, les citoyens de la Nouvelle-Écosse ont la possibilité d'examiner et de commenter les recommandations de la Commission royale.

Dans cette optique, une conférence de trois jours sur le vieillissement et les personnes âgées aura lieu la semaine prochaine dans notre province. Au cours de cette conférence, les personnes âgées de toutes les régions de la Nouvelle-Écosse pourront discuter d'une vaste gamme de questions pertinentes. Le gouvernement s'intéressera tout particulièrement à leurs discussions sur les revenus et les pensions de retraite. On obtiendra ainsi des renseignements sûrs et valables sur la réaction du public aux recommandations de notre Commission royale.

Je sais très bien que plusieurs de mes collègues ici présents ont déjà donné suite à des recommandations de commissions royales d'enquête sur les pensions. Par ce conséquent, je suis certain que vous connaissez tous le besoin qu'éprouve notre gouvernement de laisser, aux citoyens qui seront touchés par un grand nombre de modifications importantes que la Commission royale propose d'apporter aux politiques, amplement de temps pour réagir et participer au processus d'élaboration des politiques de mon gouvernement.

Pour cette raison, je ne serai en mesure d'énoncer une position finale sur aucun des points qui seront étudiés aujourd'hui. Je suis toutefois très heureux de participer à des discussions franches avec vous et il me sera certainement fort utile de connaître vos opinions et vos points de vue. Je puis même vous assurer que la présente réunion constituera un autre élément important du processus de prise de décisions de la Nouvelle-Écosse en matière de réforme du régime de pensions privé.

Permettez-moi encore une fois de souligner le degré élevé de priorité que le gouvernement de la Nouvelle-Écosse attache aux articles à l'ordre du jour de la réunion d'aujourd'hui. Notre propre Commission royale d'enquête témoigne de notre engagement dans ce domaine et nous avons fait publiquement état de notre intention d'apporter des réformes au régime de pensions dans un avenir rapproché. Néanmoins, pour le moment, nous laissons aux

citoyens de la Nouvelle-Écosse la possibilité de se prononcer et de contribuer à la planification de cet aspect important de notre avenir individuel et collectif.

En terminant, Monsieur le président, je dois ajouter que nous avons transmis les résultats des enquêtes de notre Commission royale aux autres provinces et au gouvernement fédéral et que nous espérons recevoir leurs observations et leurs conseils avant d'amorcer la formulation des objectifs définitifs.

Je vous remercie.

INTERPROVINCIAL MEETING OF MINISTERS
RESPONSIBLE FOR PENSIONS

Opening Statement
by the Honourable Mary Beth Dolin
Minister of Labour

Manitoba



TORONTO, Ontario
June 5, 1984

OPENING STATEMENT

AT THE PREMIERS' CONFERENCE LAST SUMMER, IN THIS VERY CITY, I WAS PLEASED AND HONOURED TO PRESENT A PAPER ON PENSION REFORM, OUR BILL 95, THEN AWAITING THIRD READING IN THE LEGISLATURE. THE INTEREST OF THOSE ATTENDING WAS CLEAR.

SUBSEQUENT TO THE DISCUSSIONS, PREMIER DAVIS OFFERED TO HAVE HIS GOVERNMENT SPONSOR THIS CONFERENCE OF PROVINCIAL MINISTERS RESPONSIBLE FOR PENSION LEGISLATION, IN AN ATTEMPT TO BUILD A NATIONAL CONSENSUS ON PENSION PLAN REFORM. WE BELIEVE SUCH AN ATTEMPT IS NECESSARY AND ADMIRABLE, AND WE COMMEND ONTARIO FOR HOSTING THIS MEETING.

OFFICIALS HAVE MET IN THE INTERVAL AND HAVE REPORTED THE DEVELOPMENT OF CONSENSUS ON MANY ITEMS ALTHOUGH SOME STILL REMAIN.

WE HAVE FOUND IN MANITOBA THAT THERE HAS BEEN GENERAL ACCEPTANCE BY THE PENSION INDUSTRY AND THE PUBLIC AS THE FIRST SET OF OUR TWO-PART REFORM COMES INTO EFFECT.

A PUBLIC INFORMATION CAMPAIGN DETAILING THE 1984 CHANGES HAS RECENTLY BEEN LAUNCHED, AND PUBLIC RESPONSE HAS BEEN OVERWHELMING. THE DEMAND FOR EVEN WIDER DISTRIBUTION OF INFORMATION IS UNPRECEDENTED.

I AM PLEASED TO SHARE WITH YOU THESE PAMPHLETS CONTAINING INFORMATION ON THE JANUARY 1984 CHANGES AND WILL BE GLAD TO FORWARD ON THE MATERIAL COVERING THE 1985 CHANGES AS THEY BECOME EFFECTIVE.

IT IS MY SINCERE WISH THAT THIS MEETING RESULT IN A NUMBER OF AREAS OF CONSENSUS THAT WILL STANDARDIZE PENSION REFORM ACROSS CANADA TO THE BENEFIT OF ALL CANADIANS WHO INCREASINGLY UNDERSTAND THE NEED TO PLAN LOGICALLY AND REASONABLY FOR THEIR RETIREMENT YEARS.

Document : 860-155/008

Traduction du Secrétariat

RÉUNION INTERPROVINCIALE DES MINISTRES
RESPONSABLES DES PENSIONS

Allocution d'ouverture
de l'honorable Mary Beth Dolin
ministre du Travail

Manitoba



TORONTO, (Ontario)

Le 5 juin 1984

ALLOCUTION D'OUVERTURE

J'AI EU LE PLAISIR ET L'HONNEUR DE PRÉSENTER À LA CONFÉRENCE DES PREMIERS MINISTRES PROVINCIAUX QUI A EU LIEU DANS CETTE MÊME VILLE L'ÉTÉ DERNIER UN DOCUMENT SUR LA RÉFORME DES PENSIONS, SOIT NOTRE PROJET DE LOI 95, QUI EN ÉTAIT ALORS À L'ÉTAPE DE LA TROISIÈME LECTURE À LA LÉGISLATURE. L'INTÉRÊT DES PARTICIPANTS ÉTAIT ÉVIDENT.

À LA SUITE DE NOS DISCUSSIONS, LE PREMIER MINISTRE DAVIS A OFFERT LE PARRAINAGE DE SON GOUVERNEMENT POUR LA PRÉSENTE CONFÉRENCE DE MINISTRES PROVINCIAUX RESPONSABLES DES LOIS SE RAPPORTANT AUX PENSIONS AFIN DE CHERCHER À DÉGAGER UN CONSENSUS SUR LA RÉFORME DU RÉGIME DE PENSIONS. NOUS CROYONS QU'UN EFFORT EN CE SENS EST INDISPENSABLE ET DIGNE D'ADMIRATION. C'EST POURQUOI NOUS REMERCIONS L'ONTARIO D'ACCUEILLIR LA PRÉSENTE RÉUNION.

LES FONCTIONNAIRES SE SONT DÉJÀ RÉUNIS ET ILS FAIT ÉTAT D'UN CONSENSUS SUR DE NOMBREUX POINTS MÊME SI CERTAINS PROBLÈMES DEMEURENT.

NOUS AVONS CONSTATÉ QUE L'INDUSTRIE DES PENSIONS ET LE GRAND PUBLIC DU MANITOBA ONT GÉNÉRALEMENT BIEN ACCEPTÉ L'ENTRÉE EN VIGUEUR DU PREMIER VOLET DE NOTRE RÉFORME EN DEUX ÉTAPES. LA RÉACTION DU PUBLIC À LA CAMPAGNE D'INFORMATION SUR LES MODIFICATIONS POUR 1984 RÉCEMMENT LANCÉE FUT TRÈS ENTHOUSIASTE. LA DEMANDE VISANT UNE DIFFUSION ENCORE PLUS LARGE DE L'INFORMATION EST SANS PRÉCÉDENT.

JE SUIS HEUREUX DE METTRE À VOTRE DISPOSITION LES BROCHURES TRAITANT DES MODIFICATIONS APPORTÉES EN JANVIER 1984 ET C'EST AVEC PLAISIR QUE JE VOUS TRANSMETTRAI LA DOCUMENTATION SUR LES MODIFICATIONS PRÉVUES POUR 1985 AU FUR ET À MESURE QUE CELLES-CI ENTRERONT EN VIGUEUR.

JE SOUHAITE SINCÈREMENT QUE NOUS PUISSIONS OBTENIR À LA PRÉSENTE RÉUNION UN CONSENSUS DANS UN CERTAIN NOMBRE DE DOMAINES QUI SE TRADUIRA PAR LA NORMALISATION DE LA RÉFORME DES PENSIONS DANS TOUT LE CANADA. UNE ÉVOLUTION EN CE SENS SERAIT AVANTAGEUSE POUR TOUS LES CANADIENS CAR CEUX-CI NE RENDENT DE PLUS EN PLUS COMPTE DE LA NÉCESSITÉ DE PLANIFIER LOGIQUEMENT ET RAISONNABLEMENT LEUR RETRAITE.

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INTERPROVINCIAL MEETING OF MINISTERS
RESPONSIBLE FOR PENSIONS

Notes for Remarks by the
Honourable Lorne McLaren
Minister of Labour

Saskatchewan



TORONTO, Ontario
June 5, 1984

NOT FOR RELEASE UNTIL JUNE 5, 1984

NOTES FOR REMARKS BY THE
HONOURABLE LORNE McLAREN
INTERPROVINCIAL CONFERENCE ON
PENSION REFORM

TORONTO, JUNE 1984

MR. CHAIRMAN, AND DELEGATES, I AM MOST PLEASED
TO BE HERE TODAY IN ORDER TO SHARE WITH YOU SOME OF THE
VIEWS OF THE GOVERNMENT OF SASKATCHEWAN ON THE ISSUES
ASSOCIATED WITH PENSION REFORM.

AS YOU ARE NO DOUBT AWARE, SASKATCHEWAN HAS
ALREADY TAKEN INITIATIVES IN THIS AREA. IN THE SPRING
OF 1980 WE AMENDED OUR PENSION BENEFITS ACT TO SUBSTANTIALLY
IMPROVE THE MINIMUM STANDARDS FOR PRIVATE PENSION PLANS.

THERE WERE SEVERAL SERIOUS INADEQUACIES AND
INEQUITIES IN THE ADMINISTRATION OF PRIVATE PENSION
PLANS WHICH WE FELT NEEDED URGENT REDRESS.

WHILE WE REGRET BEING THE FIRST PROVINCE TO
BREAK THE BASIC UNIFORMITY OF LEGISLATION, WE FELT THAT
THE MEASURES WERE WARRANTED AND THAT THEY ANTICIPATED THE
DIRECTION OF FUTURE UNIFORMITY.

SASKATCHEWAN'S ADVANCED POSITION DOES NOT REFLECT
A DECLINE IN OUR COMMITMENT TO THE ATTAINMENT OF UNIFORM
PENSION LEGISLATION.

ON THE CONTRARY, I WOULD LIKE TO ASSURE THE REST
OF THE DELEGATES THAT SASKATCHEWAN REMAINS FIRMLY COMMITTED
TO THE GOAL OF UNIFORMITY. WE ARE WILLING TO COMPROMISE,
BUT WE CANNOT CONSIDER CHANGES WHICH MAY REDUCE THE
EFFECTIVENESS OF THE ADVANCEMENTS WE HAVE ALREADY ADOPTED.

IN SHORT, WE SUPPORT PROGRESSIVE PROPOSALS
WITHIN THE CONSTRAINTS OF AFFORDABILITY THAT WILL IMPROVE
THE BENEFITS OF PRIVATE PENSION PLANS.

SASKATCHEWAN IS CONCERNED THAT NOT ENOUGH WORKERS
ARE PARTICIPATING IN EMPLOYER-SPONSORED PENSION PLANS.

WE, THEREFORE, ADVOCATE IMPROVED ELIGIBILITY CRITERIA FOR MEMBERSHIP INTO PRIVATE PENSION PLANS IN ORDER THAT MORE PEOPLE WILL BE ABLE TO PARTICIPATE.

ALSO, WE RECOGNIZE THAT THE CHARACTERISTICS OF THE WORKFORCE ARE CHANGING. TODAY'S WORKERS ARE INCREASINGLY MOBILE. THIS REQUIRES IMPROVED VESTING PROVISIONS TO ENABLE WORKERS TO BECOME ENTITLED TO PENSION BENEFITS WITH LESS SERVICE AND AT AN EARLIER AGE.

WOMEN HAVE BEEN IDENTIFIED AS ONE GROUP OF EMPLOYEES WHO HAVE NOT BEEN WELL TREATED BY THE EXISTING PENSION SYSTEM. SASKATCHEWAN SUPPORTS PROPOSALS FOR CHANGES THAT WILL ENHANCE WOMEN'S ABILITY TO ATTAIN MORE ADEQUATE PENSIONS. WE ALSO BELIEVE THAT PENSIONS ACCRUED DURING A MARRIAGE SHOULD BE SHARED AND THAT SURVIVOR'S BENEFITS SHOULD BE IMPROVED.

SASKATCHEWAN IS COMMITTED TO THE ELIMINATION OF INEQUITIES THAT PERSIST IN CERTAIN TYPES OF PENSION PLAN ARRANGEMENTS. WE FEEL THAT EMPLOYEES SHOULD BE CREDITED WITH THE BENEFIT OF EMPLOYER CONTRIBUTION REGARDLESS OF THEIR AGE OR SERVICE.

IN KEEPING WITH THE CONCEPT THAT PENSION BENEFITS ARE DEFERRED COMPENSATION, WE FEEL THAT THERE MUST BE EMPLOYER INPUT ON BEHALF OF ALL EMPLOYEES, AND NOT LIMITED TO THOSE THAT HAVE ATTAINED LONG SERVICE. THIS LAST CONCERN BEARS A CLOSE RELATIONSHIP TO IMPROVING THE VESTING AND LOCKING-IN REQUIREMENTS OF PENSION PLANS. WE ARE STRONGLY OF THE BELIEF THAT CONTINUING INEQUITABLE DISTRIBUTION OF EMPLOYER CONTRIBUTIONS, WILL ONLY PROVIDE ANOTHER ARGUMENT FOR THOSE INDIVIDUALS WHO ADVOCATE THE DEMISE OF THE PRIVATE PENSION PLAN SYSTEM.

SASKATCHEWAN AGREES THAT OUR PRESENT RETIREMENT INCOME SYSTEM IS FUNDAMENTALLY SOUND. ALTHOUGH THE ARRANGEMENTS CURRENTLY ENSURE A LEVEL OF INCOME THAT PROVIDES MOST RETIRED PEOPLE WITH A BASIC STANDARD OF LIVING, IT HAS BECOME NECESSARY TO CONSIDER PROPOSALS WHICH WILL PROVIDE SOME UPGRADING OF CANADA PENSION PLAN BENEFITS.

IN ADDITION, THERE REMAINS THE PROBLEM OF ENCOURAGING GREATER EFFECTIVENESS OF THE ROLE OF PRIVATE PENSION PLANS. I AM CONFIDENT THAT WE WILL BE ABLE TO REACH AGREEMENT IN MANY AREAS THAT WILL MAKE PENSION PLANS MORE ATTRACTIVE AND EFFECTIVE.

SASKATCHEWAN WELCOMES THIS OPPORTUNITY TO
CONTRIBUTE IN THE DEVELOPMENT OF A PENSION REFORM PACKAGE
WHICH WILL BE ACCEPTABLE AND AFFORDABLE AND WHICH WILL
ENHANCE THE UNIFORMITY OF PENSION LEGISLATION.

IN CLOSING, I WOULD LIKE TO THANK YOU, MR. CHAIRMAN,
AND YOUR OFFICIALS, WHO TOOK THE NECESSARY STEPS IN ARRANGING
THIS CONFERENCE. ON BEHALF OF THE SASKATCHEWAN DELEGATION,
I WISH TO EXPRESS OUR APPRECIATION FOR YOUR EFFORTS. I LOOK
FORWARD TO THE REST OF THE PROCEEDINGS WITH GREAT
ANTICIPATION.

THANK YOU.

DOCUMENT : 860-155/011

RÉUNION INTERPROVINCIALE DES MINISTRES RESPONSABLES DES PENSIONS

Notes pour une allocution
de l'honorable Lorne McLaren
ministre du Travail

Saskatchewan



TORONTO (Ontario)

Le 5 juin 1984

NE PAS DIFFUSER AVANT LE 5 JUIN 1984

NOTES POUR UNE ALLOCUTION DE L'HONORABLE LORNE McLAREN
CONFÉRENCE INTERPROVINCIALE SUR LA RÉFORME DES PENSIONS
TORONTO - JUIN 1984

MONSIEUR LE PRÉSIDENT ET CHERS DÉLÉGUÉS, JE SUIS
HEUREUX D'ÊTRE ICI AUJOURD'HUI AFIN DE VOUS EXPOSER CERTAINS
POINTS DE VUE DU GOUVERNEMENT DE LA SASKATCHEWAN SUR LES
QUESTIONS SE RAPPORTANT À LA RÉFORME DES PENSIONS.

COMME VOUS LE SAVEZ SANS AUCUN DOUTE, LA SASKATCHEWAN
EST DÉJÀ INTERVENUE DANS CE SECTEUR. AU PRINTEMPS DE 1980, NOUS
AVONS MODIFIÉ NOTRE LOI SUR LES PRESTATIONS DE PENSIONS (PENSION
BENEFITS ACT) AFIN D'AMÉLIORER CONSIDÉRABLEMENT LES NORMES
MINIMALES DES RÉGIMES DE PENSIONS PRIVÉS.

NOUS AVONS JUGÉ URGENT DE CORRIGER PLUSIEURS LACUNES ET
INJUSTICES INHÉRENTES À L'ADMINISTRATION DES RÉGIMES DE PENSIONS
PRIVÉS.

NOUS REGRETTONS D'AVOIR ÉTÉ LA PREMIÈRE PROVINCE À
DÉROGER AU PRINCIPE FONDAMENTAL DE L'UNIFORMITÉ LÉGISLATIVE MAIS
NOUS AVONS JUGÉ QUE CES MESURES S'IMPOSAIENT ET QUE L'UNIFORMITÉ
FUTURE TENDRAIT DANS CETTE DIRECTION.

MÊME SI LA SASKATCHEWAN A UNE FOULÉE D'AVANCE, CELA NE SIGNIFIE PAS QUE NOUS AYONS RENONCÉ À L'ENGAGEMENT DE VISER L'UNIFORMISATION DES LOIS SUR LES PENSIONS.

AU CONTRAIRE, JE PUIS ASSURER LES DÉLÉGUÉS DES AUTRES PROVINCES QUE LA SASKATCHEWAN POURSUIT TOUJOURS CET OBJECTIF AVEC CONVICTION. NOUS SOMMES PRÊTS À FAIRE DES COMPROMIS MAIS NOUS NE POURRONS ACCEPTER AUCUN CHANGEMENT QUI CONSTITUERAIT UN PAS EN ARRIÈRE PAR RAPPORT AUX PROGRÈS QUE NOUS AVONS ACCOMPLIS.

BREF, NOUS APPUIERONS TOUTES LES PROPOSITIONS PROGRESSIVES ET ABORDABLES QUI SE TRADUIRONT PAR UNE AMÉLIORATION DES PRESTATIONS DES RÉGIMES DE PENSIONS PRIVÉS.

LA SASKATCHEWAN EST PRÉOCCUPÉE PAR LE FAIT QUE TROP PEU DE TRAVAILLEURS PARTICIPENT À DES RÉGIMES DE PENSIONS PARRAINÉS PAR L'EMPLOYEUR. AFIN D'ÉLARGIR CETTE PARTICIPATION, NOUS PRÔNONS L'ASSOUPLISSEMENT DES CRITÈRES D'ADMISSIBILITÉ AUX RÉGIMES DE PENSIONS.

NOUS SOMMES ÉGALEMENT CONSCIENTS QUE LES CARACTÉRISTIQUES DE LA FORCE OUVRIÈRE CHANGENT. LES TRAVAILLEURS SONT AUJOURD'HUI DE PLUS EN PLUS MOBILES. IL FAUDRA DONC MODIFIER LES DISPOSITIONS EN MATIÈRE DE DÉVOLUTION AFIN DE RENDRE ADMISSIBLES À DES PRESTATIONS DE PENSIONS LES TRAVAILLEURS MOINS ÂGÉS ET QUI COMPTENT MOINS D'ANNÉES DE SERVICES.

ON A DIT QUE LES FEMMES ÉTAIENT UN DES GROUPES D'EMPLOYÉS NÉGLIGÉS PAR LE RÉGIME DE PENSIONS ACTUEL. LA SASKATCHEWAN APPUIE LES PROJETS DE MODIFICATIONS QUI PERMETTRONT AUX FEMMES D'OBTENIR DES PENSIONS PLUS CONVENABLES. NOUS CROYONS EN OUTRE QUE LES PENSIONS ACQUISES PENDANT LE MARIAGE DOIVENT ÊTRE PARTAGÉES ET QUE LES PRESTATIONS DE SURVIVANTS DOIVENT ÊTRE AMÉLIORÉES.

LA SASKATCHEWAN S'EFFORCE DE FAIRE DISPARAÎTRE LES INJUSTICES QUI CARACTÉRISENT TOUJOURS CERTAINS GENRES DE RÉGIMES DE PENSIONS. NOUS SOMMES D'AVIS QUE LES EMPLOYÉS DOIVENT POUVOIR TOUCHER LES CONTRIBUTIONS VERSÉES PAR L'EMPLOYEUR QUEL QUE SOIT LEUR ÂGE OU LEUR NOMBRE D'ANNÉES DE SERVICES.

EN VERTU DU PRINCIPE QUE LES PRESTATIONS DE PENSIONS SONT UNE RÉMUNÉRATION DIFFÉRÉE, L'EMPLOYEUR DOIT, À NOTRE AVIS, VERSER UNE CONTRIBUTION POUR TOUS LES EMPLOYÉS ET NON SEULEMENT POUR CEUX QUI ONT DE LONGS ÉTATS DE SERVICES. CETTE DERNIÈRE PRÉOCCUPATION EST LIÉE ÉTROITEMENT À L'AMÉLIORATION DES CONDITIONS DE DÉVOLUTION ET D'IMMOBILISATION DES RÉGIMES DE PENSIONS. NOUS SOMMES CONVAINCUS QU'UNE DISTRIBUTION INÉQUITABLE CONSTANTE DES CONTRIBUTIONS DE L'EMPLOYEUR NE FERAIT QUE DONNER PLUS DE POIDS AUX ARGUMENTS DE CEUX QUI PRÔNENT LA DISPARITION DU RÉGIME DE PENSIONS PRIVÉ.

LA SASKATCHEWAN EST D'ACCORD QUE NOTRE RÉGIME DE REVENU DE RETRAITE ACTUEL EST FONDAMENTALEMENT VALABLE. LES DISPOSITIONS ACTUELLES PERMETTENT À LA PLUPART DES RETRAITÉS DE TOUCHER UN REVENU LEUR PERMETTANT DE MAINTENIR UN NIVEAU DE VIE DE BASE IL EST TOUTEFOIS DEVENU INDISPENSABLE D'EXAMINER DES PROPOSITIONS POUR AUGMENTER LES PRESTATIONS EN VERTU DU RÉGIME DE PENSIONS DU CANADA.

ON DOIT ÉGALEMENT CHERCHER À RENDRE LES RÉGIMES DE PENSIONS PRIVÉS PLUS SATISFAISANTS. J'AI BON ESPOIR QUE NOUS POURRONS NOUS ENTENDRE SUR DE NOMBREUX POINTS QUI RENDRONT LES RÉGIMES DE PENSIONS PLUS INTÉRESSANT ET PLUS EFFICACES.

LA SASKATCHEWAN EST HEUREUSE DE L'OCCASION QUI LUI EST DONNER DE PARTICIPER À L'ÉLABORATION D'UNE SÉRIE DE RÉFORMES DES PENSIONS QUI SERONT ACCEPTABLES ET ABORDABLES ET QUI FAVORISERONT L'UNIFORMITÉ DES LOIS TOUCHANT LES PENSIONS.

EN TERMINANT, JE DÉSIRE REMERCIER LE PRÉSIDENT ET LES FONCTIONNAIRES DE SON MINISTÈRE QUI ONT PRIS LES DISPOSITIONS NÉCESSAIRES À LA TENUE DE LA PRÉSENTE CONFÉRENCE. AU NOM DE TOUTE LA DÉLÉGATION DE LA SASKATCHEWAN, JE VEUX QUE VOUS SACHIEZ QUE NOUS APPRÉCIONS VOS EFFORTS. J'AI TRÈS HÂTE DE PARTICIPER AUX TRAVAUX DE LA CONFÉRENCE.

MERCI.

INTERPROVINCIAL MEETING OF MINISTERS
RESPONSIBLE FOR PENSIONS

Remarks of the Hon. Bob Andrew

Minister of Finance

Government of Saskatchewan

to the Meeting of Provincial Ministers Responsible
for Pension Reform

June 5, 1984 in Toronto

Saskatchewan



TORONTO, Ontario

June 5, 1984

REMARKS OF
THE HON. BOB ANDREW
MINISTER OF FINANCE, GOVERNMENT OF SASKATCHEWAN
TO THE MEETING OF
PROVINCIAL MINISTERS RESPONSIBLE FOR PENSION REFORM
JUNE 5, 1984 IN TORONTO

Good morning.

I am pleased to be a participant in the discussion of reforms to the private pension system in Canada. I am confident that there are significant changes which we can agree upon today.

The changes we are considering will be useful and important. They will contribute to the fairer treatment of employees and their pension rights, and will be particularly beneficial to women and people who change jobs.

The private pension system is a cornerstone of Canada's retirement income system. It is a trusted and well managed system. Our meeting today indicates to Canadians that governments are concerned about retirement income, and that we are delivering on the promises which we have made concerning long-term security.

However, if the trust which Canadians have in their retirement income system is to last, we must put in place a process which will reinforce people's sense of security, and ensure that the retirement income system will be there when it is needed.

Today's issues are the easy ones. Still ahead of us are more complex and difficult questions concerning other aspects of the retirement income system and of our other committed cost programs. Pensions are just one of the social programs affected by the aging of the population.

We have also to take account of programs for health care and housing for elderly Canadians, Old Age Security payments, and supplementary income support at both the national and provincial levels. The costs of these activities, and the distribution of the costs among people in the labour force, will be a source of social and political tension in years to come.

Mr. Chairman, I am concerned by these issues, as I am sure that you and many others here today are. I would like to take a few moments to expand on these concerns, and to make a proposal for how we might wish to deal with them.

The core of the retirement income dilemma is this: On the one hand, we face major demographic changes in the next generation, and we must be concerned whether elderly Canadians in the years to come will have an adequate retirement income. As a result of this concern we are pursuing reforms, such as those we will discuss today, we are considering expanded benefits to the Canada Pension Plan, and we encourage people to save for their retirement. Obviously, ensuring an adequate retirement income for Canadians must be a major, national priority.

On the other hand, if we overemphasize retirement income, it will impair our ability to make satisfactory progress in other areas which are at least as important; for example:

- ...We must address the structural problems now affecting our economy.
- ...Canada must become more competitive in world markets.
- ...Our young people require the opportunity for meaningful and rewarding work.
- ...A changing economy will require lifelong training to adjust to changes in the demand for skills.
- ...We must reduce the deficits of governments as the economy improves.

There must be a balance between a desirable retirement income policy and the many other goals and policies which are important to us. If we are successful in striking this balance, there still remains the large question of the appropriate design of a national retirement income policy. Let me elaborate on some of the issues we must give attention to.

- (1) Retirement income programs involve massive amounts of money; how this money is raised and invested will have a profound impact on the Canadian economy and on our future prospects.
- (2) Improving the competitiveness of our economy requires investment in new products and new production facilities. Most of the funds for this investment must be readily available from Canadian sources. We should not develop a retirement income system that absorbs a large share of the country's savings, but does not participate in the solution of the country's economic problems.
- (3) The pool of capital funds controlled by pension programs is already large, and will continue to grow in importance. We should not reserve all of these funds for traditional, low-risk investments. A part of these growing capital pools must be allocated to innovative uses which will support new enterprises and new jobs.

- (4) All governments must pursue a policy of responsible deficit reduction. I have emphasized this issue at other meetings of Ministers, and I am convinced that it must be a major goal for all of us. Many Canadians are now concerned that their future security is being used to finance current expenditures by governments. Our retirement income programs must be strengthened, but we must resist any temptation to use accumulating pension funds as an easy source of deficit financing.
- (5) Proposals to expand the benefits under the CPP have been made from several sources. Improved benefits can only be obtained at some cost, and we should not increase benefits without an understanding of what we are getting and a commitment that we will pay for it.
- (6) We are all aware that contributions to the Canada Pension Plan must increase, and that a consensus on what to do was reached in 1982. We should take steps to review the appropriateness of this consensus, and implement it or to make some modification to it. However, we should not use increased funding of the CPP to finance deficits for current expenditures.

Mr. Chairman, I believe that we should leave here today knowing that we have a responsible process in place which will ensure an effective consideration of the issues which are ahead of us.

We cannot deal with retirement income issues in isolation. Ministers of Labour, Welfare, Social Development and Finance always have an interest. Yet, our approach to this important issue is often badly fragmented. This must change. We must make sure that we develop retirement income policy in a coordinated way.

Mr. Chairman, I propose that we recommend to our respective governments that a federal-provincial Committee of Ministers responsible for Retirement Income issues be established and that this Committee have a broad mandate in dealing with retirement income concerns.

It may be that today's meeting was intended to begin this kind of coordinated approach. Certainly, it is likely that we can reach an understanding today about the approach to future discussion on the Canada Pension Plan. However, it is not clear to me that the broad mandate which I have described has been provided, nor do we have a commitment by the federal government to join forces with us in this way.

This Committee of Ministers should deal with broad policy views, including the role of public and private pensions, the financing of retirement income, the impact of demographic changes, and the use of tax expenditures in retirement income. As well, the specific changes, such as those on today's agenda, must also be addressed.

Our challenge today is not just to construct a list of items which we can agree to. We must also put in place an effective process for developing a broad and co-ordinated approach to retirement income policy. The trust which Canadians place in this system depends upon their governments ensuring that retirement income programs can adapt to a changing environment. This proposal is a responsible first step toward this goal.

Thank you, Mr. Chairman.

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Traduction du Secrétariat

RÉUNION INTERPROVINCIALE DES MINISTRES
RESPONSABLES DES PENSIONS

Allocution de l'honorable Bob Andrew
ministre des Finances de la Saskatchewan
à la Réunion des ministres provinciaux
responsables de la réforme des pensions

Le 5 juin 1984 à Toronto

Saskatchewan



TORONTO (Ontario)

Le 5 juin 1984

NE PAS DIFFUSER AVANT LE 5 JUIN 1984

ALLOCUTION DE L'HONORABLE BOB ANDREW,
MINISTRE DES FINANCES DE LA SASKATCHEWAN
À LA RÉUNION DES MINISTRES PROVINCIAUX
RESPONSABLES DE LA RÉFORME DES PENSIONS
LE 5 JUIN 1984 À TORONTO

Bonjour,

Je suis heureux de participer à la discussion sur la réforme du régime de pensions privé au Canada. Je suis confiant que nous pourrons nous entendre sur un nombre considérable de modifications.

Ces modifications que nous examinerons seront à la fois utiles et importantes. Elles contribueront à faire en sorte que les employés soient traités plus équitablement et que soit protégés leurs droits en matière de pensions. Les femmes et les gens qui changent d'emploi en profiteront tout particulièrement.

Le régime de pensions privé est la pierre angulaire du régime de revenu de retraite du Canada. C'est un système bien géré auquel nous faisons confiance. Notre réunion d'aujourd'hui indiquera aux Canadiens que leurs gouvernements s'intéressent à la question

du revenu de retraite et que nous remplissons la promesse que nous avons faite à l'égard de la sécurité à long terme.

Toutefois, si nous voulons que les Canadiens continuent d'avoir confiance dans leur régime de revenu de retraite, nous devons mettre en place un processus qui leur donnera un plus grand sentiment de sécurité et la certitude que le régime de revenu de retraite existera toujours lorsqu'ils y feront appel.

Les questions qui seront examinées aujourd'hui sont les plus faciles à régler. D'autres questions plus complexes et plus difficiles nous attendent. Elles se rapportent à d'autres aspects du régime du revenu de retraite et aux autres programmes à l'égard desquels nous avons pris des engagements. Les pensions ne sont qu'un des programmes sociaux touchés par le vieillissement de la population.

Nous devons également tenir compte des programmes de soins de santé et de logements pour personnes âgées au Canada, des versements au titre de la Sécurité de la vieillesse et des suppléments de revenu aux niveaux national et provincial. Le coût de ces programmes et le partage des frais entre les travailleurs constitueront une source de tensions sociales et politiques au cours des prochaines années.

Monsieur le président, je me préoccupe de ces questions et je suis persuadé que c'est également votre cas et celui d'un grand nombre de personnes réunies ici aujourd'hui. J'aimerais traiter un peu plus longuement de ces préoccupations et formuler une proposition sur la façon de procéder.

Le coeur du dilemme en matière de revenu de retraite est le suivant : d'une part, il y aura d'importants changements démographiques au cours de la prochaine génération et nous devons nous demander si les personnes âgées de ce pays auront, à l'avenir, un revenu de retraite suffisant. Cette inquiétude nous pousse à chercher des réformes comme celles dont il sera question aujourd'hui, à envisager d'augmenter les prestations versées en vertu du Régime de pensions du Canada et à encourager les gens à mettre de l'argent de côté pour leur retraite. Il va de soi que l'établissement d'un revenu de retraite convenable pour les Canadiens doit constituer une priorité nationale de premier ordre.

D'autre part, en mettant trop l'accent sur le revenu de retraite nous réduisons nos possibilités d'accomplir des progrès satisfaisants sur d'autres plans tout aussi importants, notamment :

...Nous devons régler les problèmes fondamentaux de notre économie.

...Le Canada doit devenir plus concurrentiel sur les marchés mondiaux.

...Les jeunes doivent se voir offrir des possibilités d'occuper des emplois utiles et valorisants.

...L'évolution de l'économie rendra la formation permanente indispensable pour répondre aux changements pour ce qui est des aptitudes requises.

...Nous devons réduire les déficits des gouvernements au fur et à mesure que l'économie reprendra

Il doit s'établir un équilibre entre les politiques souhaitables en matière de revenu de retraite et les nombreux autres objectifs et politiques que nous jugeons également importants. En présupposant que nous réussissions à établir cet équilibre, il restera encore à régler la question importante de la forme que doivent avoir les politiques nationales en matière de revenu de retraite. Permettez-moi de m'étendre sur certaines questions auxquelles nous devons prêter attention.

(1) Les programmes de revenu de retraite font entrer en jeu d'énormes sommes d'argent. La façon d'obtenir ces sommes et de les investir aura une incidence profonde sur l'économie canadienne et sur nos perspectives d'avenir.

(2) L'amélioration du degré de compétitivité de notre économie exige que nous investissions dans de nouveaux produits et de nouvelles installations de production.

L'économie canadienne doit facilement fournir la majeure partie des capitaux pour ces investissements. Il faut éviter de mettre en place un régime de revenu de retraite qui absorbera une trop grande part des économies de ce pays sans contribuer à résoudre ses problèmes économiques.

- (3) Les réserves de capitaux des programmes de pensions sont déjà considérables et continueront d'augmenter. Tout cet argent ne doit pas uniquement être consacré à des investissements traditionnels comportants peu de risques. Une partie de ces réserves croissantes de capitaux doit être affectée à des projets innovateurs qui créeront de nouvelles entreprises et de nouveaux emplois.
- (4) Tous les gouvernements doivent chercher à réduire leurs déficits dans la mesure du possible. J'ai déjà souligné cet aspect à d'autres réunions des ministres et je suis persuadé que nous devons tous en faire un de nos premiers objectifs. De nombreux Canadiens craignent que les déficits actuels des gouvernements ne soient financés au prix de leur sécurité future. Il faut enrichir nos programmes de sécurité de retraite mais résister à toute tentation d'utiliser les sommes qui y sont accumulées pour financer facilement les déficits.

(5) Divers intervenants ont proposé d'augmenter les prestations versées en vertu du Régime de pensions du Canada. Or, l'augmentation de ces prestations ne peut se faire qu'à un certain coût. Donc, avant de nous prendre cette décision, nous devons comprendre exactement ce que nous en retirerons et nous engager à en assumer les frais.

(6) Nous nous rendons tous compte que les contributions au Régime de pensions du Canada doivent augmenter et un consensus en ce sens a été atteint en 1982. Nous devons prendre des mesures pour évaluer si ce consensus est opportun, puis lui donner suite ou le modifier. Quoi qu'il en soit, nous devons éviter d'utiliser les réserves accrues du Régime de pensions du Canada pour financer les déficits qu'entraînent les dépenses actuelles.

Monsieur le président, je crois que nous devrions faire en sorte que lorsque nous nous quitterons nous aurons mis en place un processus valable qui assurera un examen satisfaisant des questions qui surgiront.

Nous ne pouvons examiner les questions se rattachant au revenu de retraite séparément. Les ministres du Travail, du Bien-être,

du Développement social et des Finances sont également concernés. Toutefois, notre intervention dans ce secteur important repose trop souvent sur une perception très fragmentaire. Il faut changer cet état de choses et élaborer une politique de revenu de retraite de manière coordonnée.

Monsieur le président, je propose donc que nous recommandions à nos gouvernements respectifs la création d'un comité fédéral-provincial des ministres responsables du revenu de retraite qui serait doté d'un vaste mandat dans ce domaine.

Le but de la réunion d'aujourd'hui est peut-être justement d'amorcer cette démarche coordonnée. Il est d'ailleurs fort probable que nous puissions nous entendre aujourd'hui sur une formule pour les discussions futures touchant le Régime de pensions du Canada. Toutefois, je ne suis pas certain que nous ayons effectivement le vaste mandat auquel j'ai fait allusion et le gouvernement fédéral ne s'est pas encore engagé à collaborer avec nous en ce sens.

Notre comité des ministres doit s'intéresser aux énoncés de principes généraux touchant notamment le rôle des pensions publiques et privées, le financement du revenu de retraite, l'incidence des changements démographiques et l'utilisation des dépenses fiscales aux fins des revenus de retraite. Il faudra également examiner

des changements précis comme ceux qui figurent à l'ordre du jour de la réunion d'aujourd'hui.

Le défi à relever dès aujourd'hui ne consiste pas uniquement à dresser une liste de points sur lesquels nous pouvons nous entendre mais également à mettre sur pied un processus utile afin de définir une démarche globale et coordonnée en matière de politiques de revenu de retraite. La confiance des Canadiens en leur régime dépend de la mesure dans laquelle les gouvernements veillent à ce que les programmes de revenu de retraite s'adaptent à un monde en évolution. La proposition que j'ai formulée est une première étape logique pour atteindre cet objectif.

Monsieur le président, je vous remercie.

CE DOCUMENT EST ÉGALEMENT DISPONIBLE EN FRANÇAIS

DOCUMENT: 860-155/013

INTERPROVINCIAL MEETING OF MINISTERS
RESPONSIBLE FOR PENSIONS

Opening Remarks by
the Honourable Larry Grossman
Treasurer of Ontario
and
Minister of Economics

Ontario

TORONTO, Ontario
June 5, 1984

OPENING REMARKS BY
THE HONOURABLE LARRY GROSSMAN
TREASURER OF ONTARIO
AND
MINISTER OF ECONOMICS

AT THE INTERPROVINCIAL
MEETING ON PENSION REFORM

TORONTO, ONTARIO

JUNE 5, 1984

NOTES ONLY

CHECK AGAINST DELIVERY

WE HAVE BEFORE US THE OPPORTUNITY TO ADVANCE PENSION REFORM AND TO CAPITALIZE ON OVER A DECADE OF STUDY AND DEBATE.

THE FIRST STEP TOWARDS REFORM OF CANADA'S PENSION SYSTEM WAS THE IMPROVEMENT OF PENSIONS GUARANTEED CANADA'S ELDERLY.

THE CHALLENGE NOW IS TO IMPROVE THE FAIRNESS AND EFFECTIVENESS OF OUR EMPLOYMENT PENSION SYSTEM, AND ULTIMATELY TO IMPROVE BENEFITS AND FINANCING UNDER THE CANADA AND QUEBEC PENSION PLANS.

AS YOU ARE WELL AWARE, THE PURPOSE OF THIS MEETING IS TO TRY AND REACH A CONSENSUS ON EMPLOYMENT PENSION PLAN REFORMS THAT WILL LEAD TO A HIGH DEGREE OF LEGISLATIVE UNIFORMITY ACROSS FEDERAL AND PROVINCIAL JURISDICTIONS.

IT IS PARTICULARLY IMPORTANT THAT PENSION LEGISLATION BE COMPARABLE AMONG THE PROVINCES BECAUSE MORE THAN 90 PER CENT OF CANADA'S NEARLY 16,000 PENSION PLANS ARE UNDER PROVINCIAL JURISDICTION.

UNIFORMITY IN THE ESSENTIAL FEATURES OF PENSION LEGISLATION WOULD ENSURE:

- O COMPARABLE TREATMENT OF CANADIANS ACROSS JURISDICTIONS;
- O REDUCED ADMINISTRATIVE COSTS FOR PLAN SPONSORS;
- O ENHANCED LABOUR MOBILITY;
- O MORE EFFICIENT ALLOCATION OF INVESTMENT CAPITAL;
AND
- O STREAMLINING OF GOVERNMENT REGULATION.

THOSE MOST CONCERNED WITH UNIFORMITY ARE EMPLOYERS WITH PENSION PLANS IN MORE THAN ONE JURISDICTION. IT IS BOTH DIFFICULT AND COSTLY FOR THEM TO OPERATE PLANS UNDER DIFFERENT AND OCCASIONALLY CONFLICTING LEGISLATION. OPERATIONAL UNIFORMITY WOULD ENSURE THE CONTINUED DEVELOPMENT OF PRIVATE PENSION PLANS ACROSS CANADA AND EXTEND THE IMPACT OF OTHER VALUABLE REFORMS.

EMPLOYMENT PENSION PLAN REFORMS HAVE BEEN EXHAUSTIVELY EXAMINED BY BOTH THE PRIVATE AND PUBLIC SECTORS FOR MANY YEARS. WHILE THE PROVINCES NOW APPEAR TO HAVE REACHED CONSENSUS ON MOST ISSUES, SOME VERY IMPORTANT QUESTIONS STILL NEED TO BE RESOLVED.

THE ISSUES OF VESTING, LOCKING-IN, MINIMUM EMPLOYER CONTRIBUTIONS AND THE TERMS OF SURVIVOR BENEFITS ARE STILL OUTSTANDING, BUT IT SEEMS THAT WE ARE VERY CLOSE TO CONSENSUS.

INFLATION PROTECTION AND MEMBERSHIP CRITERIA FOR FULL AND PART-TIME WORKERS ARE FURTHEST FROM CONSENSUS. THESE ITEMS WILL BE CENTRAL TO OUR DISCUSSIONS TODAY, AND I HOPE THAT ANY DIFFERENCES CAN BE SATISFACTORILY RESOLVED.

OUR DELIBERATIONS MUST BE GUIDED BY A COMMITMENT TO UNIFORMITY. IF WE ARE WILLING TO COMPROMISE, I BELIEVE WE CAN REACH AGREEMENT ON MOST PRIVATE PENSION PLAN REFORMS AND BE IN A POSITION TO SUBMIT THAT CONSENSUS TO OUR RESPECTIVE CABINET COLLEAGUES FOR THEIR CONSIDERATION.

THIS MEETING MARKS AN IMPORTANT STEP TOWARDS ENSURING NOT ONLY A FAIRER AND MORE EFFECTIVE PRIVATE PENSION SYSTEM, BUT ALSO ITS EFFICIENT OPERATION ACROSS CANADA.

DOCUMENT: 860-155 /013

THIS DOCUMENT IS ALSO AVAILABLE IN THE ENGLISH LANGUAGE

REUNION INTERPROVINCIALE DES MINISTRES
RESPONSABLES DES PENSIONS

Allocution d'ouverture de
l'honorable Larry Grossman
ministre du Trésor
et de l'Economie
de l'Ontario

Ontario



TORONTO (Ontario)

Le 5 juin 1984

ALLOCUTION D'OUVERTURE
DE L'HONORABLE LARRY GROSSMAN
MINISTRE DU TRÉSOR
ET DE
L'ÉCONOMIE DE L'ONTARIO

A LA

RÉUNION INTERPROVINCIALE SUR LA RÉFORME DES PENSIONS

TORONTO (ONTARIO)

LE 5 JUIN 1984

Notes seulement
à vérifier avant diffusion

La possibilité nous est maintenant offerte de faire progresser la réforme des pensions et de tirer parti des études et des débats qui ont lieu depuis plus de dix ans.

La première étape en vue de la réforme du régime de pensions au Canada fut l'amélioration des pensions garanties aux personnes âgées de ce pays.

La défi que nous devons maintenant relever consiste à accroître le degré de justice et d'efficacité du régime de pensions d'emploi et, en fin compte, à améliorer les prestations et les ressources du Régime de pensions du Canada et du Régime des rentes du Québec.

Comme vous le savez, la présente réunion a pour but d'essayer de dégager un consensus en matière de réforme du régime de pensions d'emploi afin de favoriser un degré élevé d'uniformité sur le plan législatif parmi les administrations fédérale et provinciales.

Il est tout particulièrement important que les lois touchant les pensions soient comparables dans toutes les provinces parce que plus de 90 pour cent des quelque 16000 régimes de pensions au Canada relèvent des provinces.

L'uniformité des caractéristiques fondamentales des lois touchant les pensions permettrait

- . d'offrir des conditions comparables à tous les Canadiens dans toutes les administrations;
- . de réduire les frais administratifs assumés par les parrains des régimes;
- . de favoriser la mobilité de la main-d'oeuvre;
- . de répartir plus utilement les capitaux engagés; et
- . d'assouplir la réglementation gouvernementale.

Les employeurs offrant des régimes de pensions dans plus d'une administration sont les premiers à s'intéresser à l'uniformité. Il leur est à la fois difficile et onéreux de gérer des régimes assujettis à des mesures législatives différentes et parfois même contradictoires. L'uniformité sur le plan pratique permettrait une progression constante des régimes de pensions privés dans tout le Canada et accentuerait les incidences d'autres réformes valables.

La réforme des régimes de pensions d'emploi fait l'objet d'un examen exhaustif des secteur privé et public depuis de nombreuses années. Or, même si les provinces semblent être tombées d'accord sur la plupart des points, certaines questions extrêmement importantes restent encore à régler.

Il s'agit notamment de la dévolution, de l'immobilisation, des cotisations minimales de l'employeur et des conditions régissant les prestations de survivant. Toutefois, sur ces points aussi, il semble que nous soyons très près d'un consensus.

Par contre, la protection contre l'inflation ainsi que l'adhésion des travailleurs à temps plein et à temps partiel sont les points sur lesquels un consensus est encore loin d'être réalisé. Il se trouveront au coeur même de nos discussions d'aujourd'hui et j'espère que nous pourrons corriger les divergences de façon satisfaisante.

Nos travaux doivent s'inspirer d'un engagement à l'égard de l'uniformité. S'il y a volonté de compromis, je crois que nous pouvons nous entendre sur la plupart des réformes qu'il y a lieu d'apporter au régime de pensions privé et que nous serons alors en mesure de porter ce consensus à l'attention des collègues de nos cabinets respectifs.

La présente réunion marque une étape importante non seulement pour accroître le degré de justice et d'efficacité du régime de pensions privé mais également pour assurer son bon fonctionnement dans tout le Canada.

DOCUMENT: 860-155/017

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INTERPROVINCIAL MEETING OF MINISTERS
RESPONSIBLE FOR PENSIONS

REUNION INTERPROVINCIALE DES MINISTRES
RESPONSABLES DES PENSIONS

TORONTO, Ontario
June 5, 1984

TORONTO (Ontario)
Le 5 juin 1984

LIST OF PUBLIC DOCUMENTS

LISTE DES DOCUMENTS PUBLICS

DOCUMENT NO. N° DU DOCUMENT	SOURCE ORIGINE	TITLE TITRE
860-155/001		✓ Final Agenda ✓ Ordre du jour définitif
860-155/007	Nova Scotia	✓ Opening Remarks by the Honourable Greg Kerr Minister of Finance
	Nouvelle- Ecosse	✓ Allocution d'ouverture de l'honorable Greg Kerr, Ministre des Finances
860-155/008	Manitoba	✓ Opening Statement by the Honourable Mary Beth Dolin, Minister of Labour ✓ Allocution d'ouverture de l'honorable Mary Beth Dolin, ministre du Travail
860-155/011	Saskatchewan	✓ Notes for Remarks by the Honourable Lorne McLaren, Minister of Labour ✓ Notes pour une allocution de l'honorable Lorne McLaren, Ministre du Travail
860-155/012	Saskatchewan	✓ Remarks of the Hon. Bob Andrew, Minister of Finance, Government of Saskatchewan to the Meeting of Provincial Ministers Responsible for Pension Reform, June 5, 1984 in Toronto ✓ Allocution de l'honorable Bob Andrew, Ministre des Finances de la Saskatchewan à la Réunion des ministres provinciaux responsables de la réforme des pensions - le 5 juin 1984 à Toronto

DOCUMENT NO. N° DU DOCUMENT	SOURCE ORIGINE	TITLE TITRE
860-155/013	Ontario	<div>✓ Opening Remarks by the Hon. Larry Grossman, Treasurer of Ontario and Minister of Economics</div> <div>✓ Allocution d'ouverture de l'honorable Larry Grossman, Ministre du Trésor et de l'Economie de Toronto</div>
860-155/017	Secretariat	✓ List of Public Documents
	Secrétariat	✓ Liste des documents publics

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DOCUMENT: 860-156/003

PROVINCIAL AND TERRITORIAL
HEALTH MINISTERS' CONFERENCE

CONFERENCE PROVINCIALE-TERRITORIALE DES
MINISTRES DE LA SANTE

Final List of Delegates

Liste définitive des délégués

OTTAWA (Ontario)
April 4, 1984

OTTAWA (Ontario)
Le 4 avril 1984

PROVINCIAL AND TERRITORIAL
HEALTH MINISTERS' CONFERENCE

OTTAWA

April 4, 1984

Le 4 avril 1984

Final List of Delegates
Liste définitive des délégués

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Honourable David Russell
Minister of Hospitals and Medical Care

CHAIRPERSON/PRESIDENT

Susan Green
Executive Assistant to Minister of
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Ken MacLean
Senior Intergovernmental Officer
Department of Federal and
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Honourable Keith Norton
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Gerard Raymond
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Ministry of Health

Darwin Kealey
Assistant Deputy Minister
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Ministry of Health

Ron LeNeveu
Assistant Deputy Minister
Administration and Health Insurance
Ministry of Health

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John McHugh
Assistant Director
Health Information Services
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Mark Sadowski
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Philippe Hamel
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Alan McLaughlin
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Jeanne Bailey
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QUEBEC

Monsieur Pierre-Marc Johnson
Ministre de la Justice et ministre délégué
aux Affaires intergouvernementales canadiennes

Jean-Claude Deschênes
Sous-ministre
Ministère des Affaires sociales

Jacques Lamonde
Sous-ministre adjoint
Budget et contrôles budgétaires
Ministère des Affaires sociales

Jean Meloche
Sous-ministre adjoint
Affaires intergouvernementales

Guy Versailles
Attaché politique
Ministère des Affaires sociales

Laurence Demers
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Ministère des Affaires sociales

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Thomas Duperré
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Ministère des Affaires sociales

Michel Hamelin
Ministère des Affaires sociales

Blain Gauthier
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Blaise Thivierge
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NOVA SCOTIA - NOUVELLE-ECOSSE

Honourable Gerald Sheehy
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Honourable Charles Gallagher
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Claire Morris
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David Potter
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Minister of Health

Christopher Lovelace
Executive Director
Policy and Legislation
Ministry of Health

PRINCE EDWARD ISLAND / ILE-DU-PRINCE-EDOUARD

Honourable Albert P. Fogarty
Minister of Health and Social Services

Keith Wornell
Deputy Minister
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SASKATCHEWAN

Honourable Graham Taylor
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Ken Fyke
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Don Philippon
Director, Policy and Research Branch
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Sharon Andrews
Executive Assistant to the Minister
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NEWFOUNDLAND / TERRE-NEUVE

Gerald White
Director of Health Policy
Department of Health

John Abbott
Intergovernmental Affairs Secretariat

YUKON

Honourable Andy Philipsen
Minister of Health and Human Resources

Bill Klassen
Deputy Minister
Department of Health and Human Resources

NORTHWEST TERRITORIES / TERRITOIRES DU NORD-OUEST

No participant - Aucun délégué

CANADIAN INTERGOVERNMENTAL CONFERENCE SECRETARIAT /
SECRETARIAT DES CONFERENCES INTERGOUVERNEMENTALES CANADIENNES

Victoria Meikle
Secretary / Secrétaire

PROVINCIAL AND TERRITORIAL
HEALTH MINISTERS' CONFERENCE

Communiqué

OTTAWA (Ontario)
April 4, 1984

C O M M U N I Q U E

April 4, 1984

For Immediate Release

OTTAWA, The provincial and territorial Ministers of Health from across Canada will make an unprecedented appearance before a Senate committee today. The reason for this unique action is their continuing concern over the intrusive and disruptive nature of the Canada Health Act.

Appearing before the Senate Committee on Social Affairs, Science and Technology, the Ministers will stress that the Act is being imposed over the objection of the provinces and territories. The Act will create substantially increased costs for and controls on the Provinces at the same time as the federal share of health care funding is declining.

The Ministers expressed their continuing strong commitment to the general principles of the health care systems across Canada. These principles are not in question.

While recognizing the federal government's financial contribution to support health care, they reject, as a condition of this contribution, the right of Ottawa to dictate provincial health care delivery systems and priorities. The Act will undermine the ability of the provinces and territories to administer their high quality health care systems.

The proposed Canada Health Act is not only an unacceptable infringement on provincial constitutional powers in the field of health but is also based on principles that deny federal-provincial agreements on which the present system has been built.

The Ministers note that many provinces have previously voiced their concerns to the Standing Committee on Health Welfare and Social Affairs. In response to these comments some changes to the Bill were made. However, other amendments by the Committee further compounded the deficiencies of the Act.

Amendments to the Act have the effect of allowing the Federal Government to interfere in Provincial decisions on how to compensate practitioners. Section 12(2) dealing with binding arbitration is unacceptable to the provinces.

In addition Sections 2, 9, 11, 19 and 22 are further examples of matters of serious concern to the Provinces. Such changes cannot be imposed unilaterally by the Federal Government.

It is because of the federal government's unwillingness to reach a reasonable consensus with the provinces and territories that the Ministers are asking the Senate Committee to make appropriate changes in the Act and to repeal amendments recently made to the Bill by the Standing Committee on Health, Welfare and Social Affairs.

The Ministers believe the Senate has a special responsibility to consider Bill C-3 in light of its potential negative impact on the provincial and territorial health care systems. While recognizing the legitimate interests of Parliament, the provinces consider that their primary constitutional responsibility for the provision of health care services is being undermined by the Canada Health Act.

The Ministers trust that the Senate Committee will agree with the provincial and territorial Ministers on the deficiencies in the legislation and make the appropriate changes to remedy them.

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DOCUMENT: 860-156/004

CONFERENCE PROVINCIALE-TERRITORIALE DES
MINISTRES DE LA SANTE

Communiqué

OTTAWA (Ontario)

Le 4 avril 1984

C O M M U N I Q U E

Le 4 avril 1984

Pour diffusion immédiate

OTTAWA - Fait sans précédent, les ministres provinciaux et territoriaux de la Santé se présenteront aujourd'hui devant un comité sénatorial. La raison de ce fait unique est leur préoccupation constante devant les ingérences et les perturbations que présente la Loi canadienne sur la santé.

Les ministres feront valoir devant le Comité sénatorial des affaires sociales, des sciences et de la technologie que la Loi est imposée malgré l'opposition des provinces et des territoires. La Loi entraînera des frais additionnels considérables et des contrôles accrus pour les provinces, tandis que diminue la part du financement que le gouvernement fédéral apporte aux soins de santé.

Les ministres ont réaffirmé leur engagement formel envers les principes généraux des systèmes de santé au Canada. Ils ne remettent pas ces principes en question.

Tout en reconnaissant la contribution financière que le gouvernement fédéral apporte à la prestation des services de santé, les ministres s'opposent au fait que cette contribution soit assujettie au droit, pour Ottawa, de dicter les priorités des provinces et les modalités de leurs régimes de santé. La Loi nuira à la capacité des provinces et des territoires d'administrer leurs régimes de santé qui sont de qualité supérieure.

Le projet de Loi canadienne sur la santé ne constitue pas seulement une ingérence inacceptable dans les pouvoirs constitutionnels des provinces dans le domaine de la santé, mais, en outre, il est fondé sur des principes qui vont à l'encontre des ententes fédérales-provinciales en vertu desquelles le présent système a été érigé.

Les ministres font état du fait que beaucoup de provinces ont déjà manifesté leurs préoccupations au Comité permanent de la santé, du bien-être social et des affaires sociales. Certaines modifications ont été apportées au projet de loi par la suite. Toutefois, d'autres modifications proposées par le Comité n'ont fait qu'ajouter aux défauts de la Loi.

Les modifications apportées à la Loi permettent au gouvernement fédéral de s'ingérer dans les décisions des provinces sur leur façon de rémunérer les professionnels de la santé. Les provinces trouvent inacceptable le paragraphe 12(2) qui traite de l'arbitrage obligatoire.

En outre, les articles 2, 9, 11, 19 et 22 sont d'autres exemples des questions qui préoccupent grandement les provinces. Le gouvernement fédéral ne peut pas imposer unilatéralement des modifications de ce genre.

Le refus du gouvernement fédéral d'en venir à un consensus raisonnable avec les provinces et les territoires a obligé les ministres à demander au comité sénatorial de faire les changements qui s'imposent et d'abroger les modifications que le Comité permanent de la santé, du bien-être social et des affaires sociales a récemment apportées au projet de loi.

Les ministres croient que le Sénat a la responsabilité spéciale d'étudier le projet de loi C-3 en tenant compte des répercussions négatives qu'il risque d'avoir sur les régimes de santé des provinces et des territoires. Tout en reconnaissant les intérêts légitimes du Parlement, les provinces estiment que la Loi canadienne sur la santé empiète sur la responsabilité première que leur accorde la Constitution en matière de prestation des services de santé.

Les ministres sont confiants que le comité sénatorial conviendra avec eux que la Loi comporte des défauts et qu'il apportera les modifications nécessaires pour y remédier.

PROVINCIAL AND TERRITORIAL
HEALTH MINISTERS' CONFERENCE

CONFERENCE PROVINCIALE-TERRITORIALE DES
MINISTRES DE LA SANTE

OTTAWA (Ontario)
April 4, 1984

OTTAWA (Ontario)
Le 4 avril 1984

LIST OF PUBLIC DOCUMENTS

LISTE DES DOCUMENTS PUBLICS

DOCUMENT NO. N° DU DOCUMENT	SOURCE ORIGINE	TITLE TITRE
860-156/003	Secretariat Secrétariat	✓ Final List of Delegates ✓ Liste définitive des délégués
860-156/004		✓ Communiqué ✓ Communiqué
860-156/005	Secretariat Secrétariat	✓ List of Public Documents ✓ Liste des documents publics





DOCUMENT: 860-157/005

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OPENING REMARKS

BY

THE HONOURABLE LARRY GROSSMAN
TREASURER OF ONTARIO

AND

MINISTER OF ECONOMICS

AT THE INTERPROVINCIAL
MEETING ON PENSION REFORM

TORONTO, ONTARIO
DECEMBER 3, 1984

NOTES ONLY

CHECK AGAINST DELIVERY

IF I COULD START THE BUSINESS PART OF THIS MEETING BY SUMMARIZING WHAT WE ACCOMPLISHED IN JUNE, IT WILL SERVE TO PUT OUR OBJECTIVES TODAY IN FOCUS.

IN JUNE WE DISCUSSED TWENTY-ONE PENSION REFORM ISSUES AND REACHED EFFECTIVE CONSENSUS ON THIRTEEN OF THEM.

THE THIRTEEN ISSUES THAT NOW HAVE A CLEAR CONSENSUS RANGE FROM THE DIVISION OF PENSIONS UPON MARITAL BREAKDOWN TO THE TERMS OF PORTABILITY.

ON THE ISSUE OF SEX DIFFERENTIATION IN MORTALITY TABLES USED TO CALCULATE PENSION BENEFITS, WE AGREED TO WAIT FOR THE RECOMMENDATIONS OF THE ADVISORY GROUP ESTABLISHED BY THE PREVIOUS FEDERAL GOVERNMENT BEFORE TRYING TO SEEK AN INTERPROVINCIAL CONSENSUS.

WE ALSO REACHED A BROAD MINISTERIAL CONSENSUS ON SIX ISSUES THAT ARE CENTRAL TO PRIVATE-SECTOR PENSION REFORM AND THAT REQUIRE A HIGH DEGREE OF UNIFORMITY ACROSS JURISDICTIONS IF THE PRIVATE PENSION SYSTEM IS TO OPERATE EFFECTIVELY.

THESE ISSUES ARE:

- O FULL-TIME MEMBERSHIP CRITERIA;
- O PART-TIME MEMBERSHIP CRITERIA;
- O VESTING AND LOCKING-IN;
- O POST-RETIREMENT SURVIVOR BENEFITS;
- O PRE-RETIREMENT SURVIVOR BENEFITS; AND
- O MINIMUM EMPLOYER CONTRIBUTIONS

USING OUR BROAD CONSENSUS ON THESE ISSUES AS A GUIDELINE, WE ASKED OUR OFFICIALS TO DEVELOP A LIMITED NUMBER OF DETAILED ALTERNATIVES FOR MINISTERIAL CONSIDERATION AT THIS MEETING.

AT THEIR NOVEMBER 1 AND 2 MEETING HERE IN TORONTO, OUR OFFICIALS PUT TOGETHER A SET OF CONSENSUS ALTERNATIVES THAT WILL BE THE PRINCIPAL TOPIC OF TODAY'S DISCUSSIONS.

WITH THE VARIOUS CONSENSUS ALTERNATIVES BEFORE US, WE CAN NOW CONSIDER THE MERITS OF EACH SOLUTION AND, IF POSSIBLE, REACH A MINISTERIAL CONSENSUS ON WHICH ALTERNATIVES SHOULD BE INTRODUCED INTO PROVINCIAL PENSION LEGISLATION.

WHILE I UNDERSTAND THAT ANY AGREEMENT REACHED BY US TODAY IS SUBJECT TO THE APPROVAL OF OUR RESPECTIVE CABINETS, WE ARE WORKING TOWARDS A CONSENSUS THAT WILL BE THE BASIS FOR UNIFORM PROVINCIAL PENSION LEGISLATION.

AT THIS POINT, I WOULD LIKE TO SAY THAT PENSION OFFICIALS HAVE DONE AN EXCELLENT JOB OF NARROWING DOWN THE NUMBER OF OPTIONS WE MUST CONSIDER.

I WOULD ALSO LIKE TO SAY THAT THE HIGH DEGREE OF INTERPROVINCIAL AND FEDERAL-PROVINCIAL COOPERATION IN THE PENSION REFORM PROCESS IS COMMENDABLE AND IS AN EXAMPLE OF INTERGOVERNMENTAL COOPERATION AT ITS BEST.

I EMPHASIZE THAT THIS COOPERATION HAS BEEN BOTH INTERPROVINCIAL AND FEDERAL-PROVINCIAL.

AS WE DID IN JUNE, WE HAVE WITH US TODAY AN OBSERVER FROM THE FINANCE DEPARTMENT OF THE FEDERAL GOVERNMENT. FEDERAL OFFICIALS ALSO PARTICIPATED FULLY IN THE PREPARATION FOR THIS MEETING.

OUR INITIATIVE OF INVITING A FEDERAL OBSERVER TO OUR MEETINGS AND HAVING FEDERAL OFFICIALS INCLUDED IN THE PREPARATION OF BACKGROUND MATERIAL WILL FACILITATE OUR ACHIEVING UNIFORMITY IN FEDERAL-PROVINCIAL PENSION LEGISLATION.

A HIGH DEGREE OF UNIFORMITY IN FEDERAL AND PROVINCIAL PENSION LEGISLATURE IS ESSENTIAL IF THE PRIVATE PENSION SYSTEM IS TO FUNCTION EFFECTIVELY ACROSS CANADA.

THE ISSUE OF PROTECTING THE REAL VALUE OF PRIVATE PENSIONS IS ALSO ON OUR AGENDA.

OF ALL THE ISSUES PENSION MINISTERS MUST CONSIDER, THIS IS PROBABLY THE MOST DIFFICULT BECAUSE OF ITS COMPLEXITY, ITS CONTROVERSIAL NATURE, AND ITS COST.

AS WE AGREED AT OUR LAST MEETING, MY OFFICIALS PREPARED AND CIRCULATED A BACKGROUND PAPER EXPLAINING ONTARIO'S VIEW OF THE ISSUE AND THE IMPACT OF THE 60 PER CENT FORMULA.

CONCERNS HAVE BEEN RAISED IN ONTARIO AND OTHER PROVINCES ABOUT THE IMPACT THIS FORMULA WILL HAVE ON INDIVIDUAL PENSION PLANS AND ABOUT THE FAIRNESS OF SHARING A PARTICULAR COMPONENT OF A PENSION PLAN'S INVESTMENT EARNINGS BY FORMULA.

I THINK YOU WILL AGREE WITH ME THAT THERE IS AS YET NO CONSENSUS ON HOW BEST TO PROTECT THE REAL VALUE OF PRIVATE PENSIONS.

BUT A LACK OF CONSENSUS ON THIS ISSUE SHOULD NOT STALL PENSION REFORM.

IT IS IMPORTANT THAT ALL JURISDICTIONS CONTINUE TO STUDY THIS ISSUE AND DISCUSS IT WITH EMPLOYEES AND EMPLOYERS, BUT WE SHOULD PROCEED WITH THOSE REFORMS THAT HAVE CONSENSUS BY THE END OF TODAY'S MEETING.

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ALLOCUTION D'OUVERTURE
DE
L'HONORABLE LARRY GROSSMAN
TRÉSORIER DE L'ONTARIO
ET
MINISTRE DE L'ÉCONOMIE
À LA RÉUNION INTERPROVINCIALE
SUR LA RÉFORME DES PENSIONS

TORONTO (ONTARIO)

LE 3 DÉCEMBRE 1984

NOTES SEULEMENT

À VÉRIFIER AVANT DISTRIBUTION

J'aimerais entamer les travaux de la présente réunion en résumant nos réalisations du mois de juin de manière à faire ressortir nos objectifs d'aujourd'hui.

En juin dernier, nous avons discuté de trente et un aspects touchant la réforme des pensions et nous nous sommes réellement entendus sur treize d'entre eux.

Ces treize aspects sur lesquels il existe maintenant un consensus précis se situent entre le partage des pensions en cas de rupture du mariage et les conditions de transférabilité.

Pour ce qui est de la différenciation d'après le sexe dans les tableaux de mortalité aux fins du calcul des prestations de pension, nous avons convenu d'attendre les recommandations du groupe consultatif créé par le dernier gouvernement fédéral avant de chercher à dégager un consensus interprovincial.

Les ministres se sont également globalement entendus sur six points centraux pour la réforme des pensions dans le secteur privé. Ces points exigent un degré élevé d'uniformité d'une administration à l'autre si l'on veut que le régime de pensions privé fonctionne de façon satisfaisante.

Ce sont les points suivants :

- . La participation des employés à plein temps
- . La participation des employés à temps partiel
- . L'acquisition d'avantages et l'immobilisation des cotisations
- . Les prestations de survivant après la retraite
- . Les prestations de survivant avant la retraite
- . Les contributions minimales de l'employeur

En nous fondant sur le consensus global sur ces points, nous avons demandé à nos fonctionnaires d'élaborer un nombre restreint de possibilités détaillées que les ministres pourraient étudier à la présente réunion.

Au cours de leur réunion des 1er et 2 novembre qui a eu lieu ici même à Toronto, nos fonctionnaires ont élaboré une série de possibilités de consensus qui seront au coeur même de nos discussions d'aujourd'hui.

Nous pouvons maintenant examiner ces diverses possibilités, évaluer les mérites de chacune et, si possible, dégager un consensus ministériel sur celles d'entre elles qu'il y a lieu d'adopter d'intégrer à des lois provinciales sur les pensions.

Je suis conscient que tout accord auquel nous parviendrons aujourd'hui devra être approuvé par nos cabinets respectifs, mais il n'en demeure pas moins que nous nous dirigeons vers un consensus qui servira de base à l'établissement d'une loi provinciale uniforme sur les pensions.

Je dois maintenant souligner que les fonctionnaires des pensions ont effectué un excellent travail en réduisant le nombre de possibilités que nous devons examiner. J'ajouterai que le degré élevé de collaboration interprovinciale et fédérale-provinciale en matière de réforme des pensions est exemplaire.

Je souligne d'ailleurs que cette affirmation vaut à la fois pour la collaboration interprovinciale et fédérale-provinciale.

Comme en juin dernier, un observateur du ministère fédéral des Finances assiste à notre réunion. Les fonctionnaires fédéraux ont en outre participé pleinement aux préparatifs en vue de notre réunion.

Notre décision d'inviter un observateur fédéral à nos réunions et de faire participer des fonctionnaires fédéraux à l'élaboration de la documentation favorisera l'uniformité des lois fédérales et provinciales touchant les pensions.

Un degré élevé d'uniformité en matière de législation fédérale et provinciale dans le secteur des pensions est indispensable au bon fonctionnement du régime privé de pensions dans tout le Canada.

La question de la protection de la valeur réelle des pensions de ce secteur figure également à notre ordre du jour.

De tous les aspects sur lesquels les ministres responsables des pensions doivent se pencher, ce dernier est sans doute celui qui soulèvera le plus de difficultés en raison de sa complexité, de son caractère controversé et des frais qu'il comporte.

Comme nous avons convenu à notre dernière réunion, les fonctionnaires de mon ministère ont rédigé et distribué un document de fond expliquant la position de l'Ontario sur ce point et les incidences de la formule du 60 pour cent.

Des inquiétudes furent manifestées en Ontario et dans d'autres provinces au sujet des conséquences de cette formule pour les plans de pensions privés et de la mesure dans laquelle il est juste d'établir une formule pour le partage d'un élément quelconque du produit de l'investissement d'un régime de pension.

Je crois que vous serez d'accord avec moi qu'il n'existe encore aucun consensus sur la meilleure manière de protéger la valeur réelle des pensions privées.

Cet état de choses ne devrait toutefois pas bloquer la réforme des pensions.

Il est important que toutes les administrations continuent d'étudier cette question et en discutent avec les employés et les employeurs mais nous devrions néanmoins aller de l'avant avec les réformes sur lesquelles il existera un consensus à la fin de la réunion d'aujourd'hui.

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INTERPROVINCIAL MEETING OF MINISTERS
RESPONSIBLE FOR PENSIONSRÉUNION INTERPROVINCIALE DES MINISTRES
RESPONSABLES DES PENSIONS

TORONTO

December 3, 1984

Le 3 décembre 1984

LIST OF PUBLIC DOCUMENTS

LISTE DES DOCUMENTS PUBLICS

DOCUMENT NO. N° DU DOCUMENT	SOURCE ORIGINE	TITLE TITRE
860-157/005	Ontario	✓ Opening Remarks by the Honourable Larry Grossman, Treasurer of Ontario and Minister of Economics ✓ Allocution d'ouverture de l'honorable Larry Grossman, Trésorier de l'Ontario et ministre de l'Economie

DOCUMENT: 860-158/004

42nd ANNUAL CONFERENCE OF PROVINCIAL
MINISTERS OF MINES

Presentation

Geological Association of Canada

Geological Association of Canada



CHARLOTTETOWN, P.E.I.
September 17, 1985

PRESENTATION
TO THE 42ND PROVINCIAL MINES
MINISTERS' CONFERENCE
CHARLOTTETOWN, P.E.I.

ON BEHALF OF
THE GEOLOGICAL ASSOCIATION OF CANADA
BY
J. ALAN COOPE
PRESIDENT

SEPTEMBER 17TH 1985

EXECUTIVE SUMMARY

GLOBAL ECONOMICS REQUIRE THAT THE CANADIAN MINING INDUSTRY DISCOVERS AND DEVELOPS WORLD-CLASS MINERAL DEPOSITS WHICH CAN BE OPERATED EFFICIENTLY AND IN COMPETITION WITH DEPOSITS LOCATED IN OTHER PARTS OF THE WORLD.

FROM THE RECORD IT IS EVIDENT THAT CANADA HAS EXCEPTIONAL POTENTIAL FOR THE DISCOVERY OF NEW, WORLD-CLASS DEPOSITS.

SEVERAL MAJOR DISCOVERIES IN RECENT YEARS HAVE RESULTED FROM THE APPLICATION OF NEW EXPLORATION PROCEDURES DEVELOPED THROUGH OBJECTIVE GEOLOGICAL RESEARCH AND DEVELOPMENT.

THE RECORD ALSO SHOWS THAT CANADA HAS BENEFITED FROM THIS COUNTRY'S PREEMINENT EXPERTISE IN EXPLORATION TECHNOLOGICAL DEVELOPMENT.

INTEGRATION OF THIS GEOLOGICAL AND TECHNOLOGICAL CAPABILITY WILL LEAD TO FURTHER SOPHISTICATION OF EXPLORATION METHODOLOGY AND IMPROVED EFFICIENCY IN THE SEARCH FOR MAJOR NEW DEPOSITS.

GEOLOGICAL ASSOCIATION OF CANADA
PRESENTATION TO THE 42ND PROVINCIAL MINES
MINISTERS' CONFERENCE

MR. CHAIRMAN, PROVINCIAL MINISTERS, LADIES AND GENTLEMEN. MY NAME IS ALAN COOPE. IT IS MY PRIVILEGE AND PLEASURE TO ADDRESS YOU AS THE PRESIDENT OF THE GEOLOGICAL ASSOCIATION OF CANADA.

THE ASSOCIATION HAS A MEMBERSHIP OF 3000 GEOSCIENTISTS FROM ALL PROVINCES AND TERRITORIES IN CANADA. IT SERVES ALL THE DISCIPLINES OF GEOSCIENCE AND PROVIDES A UNIQUE MEDIUM FOR THE PROMOTION, COMMUNICATION AND ADVANCEMENT OF GEOLOGY IN CANADA.

AT THE 1984 MINES MINISTERS' CONFERENCE IN YELLOWKNIFE, I DESCRIBED THE FUNDAMENTAL ROLE OF GEOLOGY TO MINING IN CANADA AND EXPLAINED WHY GEOLOGY IS INDEED "THE LIFEBLOOD OF THE INDUSTRY".

FOR A VARIETY OF ECONOMIC REASONS BEYOND THE CONTROL OF OUR DOMESTIC INDUSTRY, CANADIAN MINING IS FEELING THE PINCH OF WORLD COMPETITION. FOR NORTH AMERICAN PRODUCERS, MOST METAL PRICES, IN REAL TERMS, HAVE BEEN THE LOWEST THEY HAVE BEEN FOR DECADES.

IT SHOWS ON THE BALANCE SHEETS.

THE INDUSTRY HAS BEEN VERY SKILLFUL AND INNOVATIVE IN ADDRESSING THESE SHORT-TERM DIFFICULTIES AND THIS RESOURCEFULNESS IS SHOWING THROUGH. PRODUCTIVITIES ARE INCREASING. FINANCIAL PERFORMANCES ARE IMPROVING. THE COMPETITIVE EDGE IS BEING SHARPENED. CANADA'S SECOND-TO-NONE REPUTATION AS A MINING NATION HAS BEEN ENHANCED.

BUT, THERE HAVE BEEN SIGNIFICANT CHANGES.

MANY OF THE MINERAL DEPOSITS THAT CANADIAN MINERS HAVE WORKED IN THE PAST ARE NO LONGER ECONOMIC. IN ORDER TO SUSTAIN THE INDUSTRY INTO THE FUTURE WE HAVE TO DISCOVER MORE DEPOSITS.

THE IMPORTANT REALIZATION IS THAT THESE NEW DISCOVERIES CANNOT BE JUST ORDINARY MINERAL DEPOSITS. THEY HAVE TO BE WORLD-CLASS DEPOSITS - WHICH CAN BE OPERATED EFFICIENTLY AND IN COMPETITION WITH DEPOSITS LOCATED IN OTHER PARTS OF THE WORLD.

CANADA HAS WORLD-CLASS DEPOSITS

WORLD CLASS DEPOSITS RECOGNIZED MANY YEARS AGO GAVE BIRTH TO NORANDA, COMINCO, HOLLINGER, MCINTYRE, DOME MINES, HUDSON BAY MINING AND SMELTING, INCO, FALCONBRIDGE AND THE BUCHANS MINING COMPANY. THEN OTHERS WERE DISCOVERED WHICH ESTABLISHED KERR ADDISON, BRUNSWICK, THE THOMPSON CAMP, THE IRON ORE COMPANY, RIO

ALGOM, DENISON, KIDD CREEK, BETHLEHEM AND LORNEX. THE POTASH AND URANIUM DEPOSITS OF SASKATCHEWAN AND THE COAL DEPOSITS FURTHER WEST ARE VERY SIGNIFICANT RESOURCES ON THE GLOBAL SCALE. THERE ARE OTHERS I HAVE NOT MENTIONED. AND, THERE ARE MORE TO BE FOUND.

HOW CAN WE BE SO CERTAIN THAT THERE ARE MORE TO BE FOUND?

THE RECORD AND OUR GROWING EXPLORATION EXPERTISE TELL US!

MANY OF THOSE DEPOSITS THAT BECAME THE FOUNDATION OF OUR MAJOR CORPORATIONS WERE RELATIVELY EASY TO FIND. IN SOME INSTANCES IMPROVED MINING AND PROCESSING TECHNOLOGY HAS MADE MINERALIZATION INTO ORE BUT MANY OF OUR MORE RECENT DISCOVERIES HAVE DEMANDED GREATER SOPHISTICATION DEVELOPED FROM IMPROVED EXPLORATION TECHNOLOGY AND OUR MORE ADVANCED UNDERSTANDING OF MINERAL DEPOSITS GEOLOGY.

LET ME GIVE YOU SOME EXAMPLES.

- * GEOLOGICAL MAPPING AND CAREFUL INTERPRETATION OF SEDIMENTARY ENVIRONMENTS IN THE PRECAMBRIAN OF THE BLIND RIVER -ELLIOT LAKE AREA PRIOR TO THE DISCOVERY OF URANIUM IN THE 1950'S LED TO A MUCH MORE RAPID DEVELOPMENT OF RESERVES SIMPLY BECAUSE THE NEWLY FOUND MINERALIZATION COULD BE DIRECTLY RELATED TO THE GEOLOGICAL ENVIRONMENT.

* THE URANIUM DEPOSITS OF THE ATHABASCA BASIN OF SASKATCHEWAN ARE AMONG THE WORLD'S RICHEST. THE IMPORTANT, SUCCESSIVE DISCOVERIES IN THE 1970'S AND EARLY 1980'S FOLLOWED FROM THE GEOLOGICAL APPRECIATION OF THE GENETIC AND SPATIAL ASSOCIATION OF THE DEPOSITS WITH THE BASAL ATHABASCAN UNCONFORMITY AND CERTAIN STRATA AND STRUCTURES IN THE ARCHEAN BASEMENT. SUBSEQUENT DEVELOPMENT OF SOME OF THESE DEPOSITS AT KEY LAKE, AND ELSEWHERE HAS MADE CANADA THE LEADING PRODUCER OF URANIUM IN THE WORLD. ADDITIONAL DISCOVERIES HAVE BEEN MADE AND RESERVES EXPANDED AT COLLINS BAY, CIGAR LAKE, DAWN LAKE AND MCCLEAN LAKE.

* GOLD MINERALIZATION IN THE HEMLO AREA HAS BEEN KNOWN FOR 40 YEARS. THE HEIGHTENED INTEREST IN GOLD IN THE 1970'S LED TO THE DEVELOPMENT OF GEOLOGICAL CONCEPTS WHICH WERE NOT CONSIDERED IN THE EXPLORATION PROGRAMS IN THE 1940'S, THE 1950'S AND THE 1960'S. AFTER THESE NEW IDEAS WERE COURAGEOUSLY APPLIED AT HEMLO IN 1981, SUBSEQUENT EVENTS HAVE OUTLINED OVER 20 MILLION OUNCES OF NEW WEALTH.

* SIMILARLY, GEOLOGICAL RESEARCH ON BASE METAL MASSIVE SULPHIDE DEPOSITS LED TO A LARGE DEGREE BY CANADIAN GEOLOGISTS. IDENTIFIED A MINERAL DEPOSIT MODEL THAT WAS USED TO DISCOVER THE BLIND ANSIL AND MILLENBACH DEPOSITS IN QUEBEC AT DEPTHS OF, RESPECTIVELY, 4000 FEET AND 2500 FEET.

- * GEOLOGICAL MAPPING AND METALLOGENIC STUDIES CARRIED OUT BY GOVERNMENT GEOLOGISTS UNDER CANADA-NEWFOUNDLAND AGREEMENTS AND SUBSEQUENT, COMPETENT EXPLORATION BY A LARGE MINING COMPANY LED TO THE DISCOVERY OF THE CHETWYND DEPOSIT WHERE ONGOING EXPLORATION HAS OUTLINED CLOSE TO 10 MILLION TONNES OF VIABLE GOLD MINERALIZATION IN AN AREA WITHOUT ANY PREVIOUS GOLD PRODUCTION.

ALL THESE EXAMPLES ILLUSTRATE THE FUNDAMENTAL IMPORTANCE OF GEOLOGICAL RESEARCH AND DEVELOPMENT AND THE NEED TO CONSTANTLY IMPROVE OUR GEOLOGICAL EXPERTISE. HEMLO, CHETWYND, KEY LAKE, CIGAR LAKE AND ALL THE OTHERS INDICATE THAT WORLD CLASS DEPOSITS REMAIN TO BE DISCOVERED. THE BETTER UNDERSTANDING RESULTING FROM COMPETENT AND PRODUCTIVE GEOLOGICAL RESEARCH, AS DEMONSTRATED BY THESE EXAMPLES, LEADS TO THE DISCOVERY OF MORE RESOURCES INCLUDING THOSE, ALL IMPORTANT, MAJOR DEPOSITS WHICH OTHERWISE WOULD NOT HAVE BEEN SUSPECTED OR SOUGHT.

SUCH PRODUCTIVE GEOLOGICAL R & D IS FUNDAMENTAL TO A VIABLE AND PROGRESSIVE MINING INDUSTRY.

THERE IS ANOTHER ASPECT OF MINERAL DISCOVERY THAT DESERVES ATTENTION.

TECHNOLOGICAL AND SCIENTIFIC DEVELOPMENTS COMMONLY 'CATALYSE' EACH OTHER. AN ADVANCE IN TECHNOLOGY OFTEN PRODUCES NEW DATA WHICH, IN TURN, LEAD TO A RESOLUTION OF SCIENTIFIC PROBLEMS WITH CONSEQUENT SCIENTIFIC ADVANCES. SUCH IS TRUE IN GEOSCIENCE AS IN OTHER SCIENTIFIC AND ENGINEERING DISCIPLINES.

CANADA HAS LONG BEEN RENOWNED AS A LEADER IN THE DEVELOPMENT AND APPLICATION OF A WIDE RANGE OF EXPLORATION TECHNOLOGIES. ONE PROMINENT FIELD OF CANADIAN EXPERTISE IS THAT OF MINING GEOPHYSICAL METHODS.

A HIGH PROPORTION OF THE KNOWN MINERAL DEPOSITS OCCURRING IN CANADIAN ENVIRONMENTS RESPOND TO ELECTRICAL, MAGNETIC AND RADIOMETRIC METHODS.

THESE CHARACTERISTICS OF OUR PROVEN MINERAL DEPOSIT HERITAGE, PLUS FAVOURABLE MINING REGULATIONS, ARE THE BASIC REASONS FOR THE DEVELOPMENT AND ESTABLISHMENT OF THIS GEOPHYSICAL EXPERTISE. ONCE ESTABLISHED IN CANADA, THE EXPERTISE FOCUSSES ATTENTION ON CANADIAN EXPLORATION PROBLEMS OF GEOLOGY AND THE PHYSICAL ENVIRONMENT.

FOR EXAMPLE,

- * THE **INPUT** METHOD, ARGUABLY THE MOST SUCCESSFUL AIRBORNE ELECTROMAGNETIC TECHNIQUE, WAS INITIALLY DEVELOPED IN CANADA IN THE EARLY 1960'S AND IS NOW AVAILABLE TO EXPLORERS IN ALL PARTS OF THE FREE WORLD. YET, OF THE 23 ECONOMICALLY SIGNIFICANT DISCOVERIES CREDITED TO INPUT, 20 (87%) HAVE BEEN LOCATED IN CANADA.

- * BECAUSE OF THE PECULIARITIES OF THE CANADIAN GEOLOGICAL AND PHYSICAL ENVIRONMENTS, GEOPHYSICAL EXPLORATION METHODS DEVELOPED OUTSIDE CANADA ARE NOT ALWAYS APPLICABLE AND EFFECTIVE UNDER CANADIAN CONDITIONS. HOWEVER, HIGHLY QUALIFIED PEOPLE, ATTRACTED TO THE PROFESSION IN CANADA BY THE SUCCESS OF GEOPHYSICAL TECHNOLOGY, CAN READILY IMPROVE AND ADAPT METHODS DEVELOPED IN OTHER COUNTRIES TO PRODUCTIVE APPLICATION TO CANADIAN PROBLEMS. DEEP PENETRATING ELECTROMAGNETIC AND INDUCED-POLARIZATION TECHNIQUES WERE DEVELOPED OUTSIDE CANADA, BUT INSTRUMENTATION FOR THESE METHODS CURRENTLY MANUFACTURED IN CANADA IS FRONT-LINE EQUIPMENT AND READILY APPLICABLE TO EXPLORATION IN THIS COUNTRY.

THERE ARE OTHER TECHNOLOGICAL FIELDS THAT ARE BEING DEVELOPED TO PROSPECT UNDER A WIDE VARIETY OF CANADIAN CONDITIONS.

* THE LAKE SEDIMENT SAMPLING GEOCHEMICAL TECHNIQUE WAS DEVELOPED IN CANADA AS A REGIONAL RECONNAISSANCE TOOL SUITED TO THE PHYSIOGRAPHIC CONDITIONS THAT EXIST OVER LARGE AREAS OF THIS COUNTRY. THE METHOD, PERFECTED BY RESEARCH WORK BY THE FEDERAL AND CERTAIN PROVINCIAL GEOLOGICAL SURVEYS AND BY UNIVERSITY DEPARTMENTS HAS BEEN RESPONSIBLE FOR INITIALLY INDICATING SEVERAL MINERAL DEPOSITS, INCLUDING THE AGRICOLA LAKE COPPER, ZINC, SILVER DEPOSIT IN THE NORTHWEST TERRITORIES, AND THE LAC BRISSON-STRANGE LAKE ZIRCONIUM, YTTRIUM, NIOBIUM, BERYLLIUM, RARE EARTH DEPOSIT ON THE LABRADOR-QUEBEC BORDER.

* OVERBURDEN DRILLING AND SAMPLING OF GLACIAL DEPOSITS, FORMING THICK AND EXTENSIVE BLANKETS OVER FAVOURABLE MINERAL BELTS IN SEVERAL AREAS OF THE CANADIAN SHIELD, HAVE BEEN PROMINENT IN THE DISCOVERY OF AT LEAST FOUR GOLD DEPOSITS WITHIN THE LAST FEW YEARS. THESE INCLUDE THE GOLDEN POND EAST ZONE IN CASA BERARDI TOWNSHIP, QUEBEC, THE BELL CREEK AND AQUARIUS DEPOSITS IN ONTARIO AND THE EP DEPOSIT IN SASKATCHEWAN.

AT THE PRESENT LEVEL OF DEVELOPMENT, OVERBURDEN DRILLING METHODOLOGY IS STILL RELATIVELY CRUDE BUT THESE SUCCESSES ARE STIMULATING RESEARCH INTO (A) THE DISTRIBUTION OF GOLD

AND OTHER METALS) IN GLACIAL DEPOSITS, (B) IMPROVED SOPHISTICATION IN HOLE MAKING AND (C) MORE DETAILED INVESTIGATIONS OF SAMPLE RECOVERY AND ANALYTICAL TREATMENT. THIS WORK WILL INEVITABLY RESULT IN ADVANCES WHICH WILL LEAD DIRECTLY TO MORE EFFECTIVE AND EFFICIENT PROSPECTING OF CANADA'S EXTENSIVELY OVERBURDEN-COVERED, GLACIATED REGIONS.

CLEARLY, FROM THESE FEW EXAMPLES, IT IS EVIDENT THAT THE PRESENCE OF EXPLORATION TECHNOLOGICAL EXCELLENCE IN THIS COUNTRY IS AN IMPORTANT BENEFIT TO CANADA AND THE CANADIAN MINING INDUSTRY. GEOPHYSICAL TECHNOLOGICAL ADVANCES HAVE BEEN THE MOST PROMINENT BUT THERE ARE OTHER FIELDS SUCH AS DRILLING, GEOCHEMISTRY, REMOTE SENSING, SATELLITE DATA INTERPRETATION AS WELL AS COMPUTER-ASSISTED INTERPRETATIONAL TECHNIQUES THAT ARE IMPORTANT AND SHOULD RECEIVE ATTENTION AND SUPPORT IF CANADA IS TO MAINTAIN THE EFFECTIVENESS OF ITS EXPLORATION EXPERTISE.

THERE IS SOMETHING THAT IS EVEN MORE IMPORTANT.

IT WILL BE EVIDENT UPON REFLECTION THAT THE MOST CRITICAL FACTOR IN THE APPLICATION OF TECHNOLOGY AND TECHNOLOGICAL EXPERTISE IS THE UNDERSTANDING OF THE NATURE AND PROPERTIES OF THE MINERAL DEPOSITS BEING SOUGHT.

SOPHISTICATED TECHNOLOGY IS MOST EFFECTIVE WHEN THE METHODS ARE DESIGNED AND APPLIED TO DETECT SPECIFIC CHARACTERISTICS OF THE DESIRED TARGET.

EXPERTISE IN APPLICATION IS AS EQUALLY IMPORTANT AS THE TECHNOLOGY ITSELF. IT IS EASIER TO FIND AN OREBODY WHEN YOU KNOW WHAT YOU ARE LOOKING FOR.

GEOLOGICAL R & D PROVIDES THIS UNDERSTANDING OF THE MINERAL DEPOSIT TARGET. IT IS THIS INTEGRATION OF GEOLOGICAL R & D WITH TECHNOLOGICAL DEVELOPMENT THAT WILL BE MOST PRODUCTIVE IN THE SEARCH FOR WORLD-CLASS MINERAL DEPOSITS IN CANADA. NEW DISCOVERIES IN OUR ESTABLISHED MINING CAMPS AND IN NEW GEOLOGICAL ENVIRONMENTS CAN BE READILY RELATED TO THE EXTENT AND DEGREE OF THIS INTEGRATION.

GEOLOGICAL R & D AND EXPLORATION TECHNOLOGICAL DEVELOPMENT ARE THE LONG-TERM UNDERPINNINGS OF THE INDUSTRY'S COMPETITIVE EXISTENCE. THEY MUST NOT BE IGNORED OR DEEMPHASIZED AS THE INDUSTRY SKILLFULLY TACKLES THE SHORT TERM ISSUES OF THE DAY.

INVESTMENT IN GEOLOGICAL R & D AND EXPLORATION TECHNOLOGICAL DEVELOPMENT WILL LEAD TO THE DISCOVERY OF WORLD CLASS DEPOSITS, WILL CONTRIBUTE TO THE ENHANCEMENT OF CANADA AS A MINING NATION AND WILL LEAD TO PROFITS, JOBS AND ECONOMIC GROWTH.

GEOLOGICAL R&D AND EXPLORATION TECHNOLOGICAL DEVELOPMENT ARE THE LONG-TERM UNDERPINNINGS OF THE CANADIAN MINING INDUSTRY'S COMPETITIVE EXISTENCE. SUPPORT OF THIS ACTIVITY IS ESSENTIAL TO THIS COUNTRY'S ECONOMIC GROWTH, THE CREATION OF NEW JOB OPPORTUNITIES AND THE MAINTENANCE OF CANADA'S OUTSTANDING REPUTATION AS A MINING NATION.

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42^e CONFÉRENCE ANNUELLE DES MINISTRES
PROVINCIAUX DES MINES

Présentation

Association géologique du Canada

Association géologique du Canada



CHARLOTTETOWN (I-du-P.-É)
Le 17 septembre 1985

PRÉSENTATION À LA
42^e CONFÉRENCE ANNUELLE DES MINISTRES PROVINCIAUX DES MINES
CHARLOTTETOWN (Î.-P.-É.)

AU NOM DE L'ASSOCIATION GÉOLOGIQUE DU CANADA

PAR

J. ALAN COOPE

PRÉSIDENT

LE 17 SEPTEMBRE 1985

RÉSUMÉ ADMINISTRATIF

IL EST ESSENTIEL POUR L'ENSEMBLE DE NOTRE ÉCONOMIE QUE L'INDUSTRIE MINIÈRE CANADIENNE DÉCOUVRE ET EXPLOITE DES GISEMENTS MINIERS DE STATURE MONDIALE QUI SE PRÉTENT À UNE MISE EN VALEUR SATISFAISANTE ET PERMETTENT DE CONCURRENCER DES GISEMENTS SITUÉS DANS D'AUTRES RÉGIONS DU MONDE.

DES DOCUMENTS PROUVENT QUE LE CANADA OFFRE DES POSSIBILITÉS EXCEPTIONNELLES POUR LA DÉCOUVERTE DE NOUVEAUX GISEMENTS DE STATURE MONDIALE.

PLUSIEURS DÉCOUVERTES IMPORTANTES DES DERNIÈRES ANNÉES SONT LE RÉSULTAT DE L'UTILISATION DE NOUVELLES MÉTHODES D'EXPLORATION MISES AU POINT GRÂCE À UNE RECHERCHE ET À UN DÉVELOPPEMENT GÉOLOGIQUES OBJECTIFS.

LES DOCUMENTS RÉVÈLENT ÉGALEMENT QUE LE CANADA A PROFITÉ DE SA COMPÉTENCE DE PREMIER ORDRE EN MATIÈRE DE TECHNIQUES D'EXPLORATION.

LA COMBINAISON DE LA COMPÉTENCE GÉOLOGIQUE ET TECHNOLOGIQUE SE
TRADUIRA PAR UN PERFECTIONNEMENT ACCRU DES MÉTHODES D'EXPLORATION
ET DE MEILLEURS RÉSULTATS SUR LE PLAN DE LA RECHERCHE
DE NOUVEAUX GISEMENTS IMPORTANTS.

LA RECHERCHE ET LE DEVELOPPEMENT GÉOLOGIQUES AINSI QUE LES
PROGRÈS TECHNOLOGIQUES EN MATIÈRE D'EXPLORATION SONT LES FONDE-
MENTS À LONG TERME DE L'EXISTENCE D'UNE INDUSTRIE MINIÈRE
CANADIENNE CONCURRENTIELLE. IL EST INDISPENSABLE À LA CROISSANCE
ÉCONOMIQUE DE CE PAYS, À LA CRÉATION DE NOUVEAUX EMPLOIS ET À LA
DÉFENSE DE LA RÉPUTATION EXCEPTIONNELLE DU CANADA COMME PAYS
MINIER DE SOUTENIR CES ACTIVITÉS.

ASSOCIATION GÉOLOGIQUE DU CANADA

PRESENTATION À LA 42e CONFÉRENCE DES MINISTRES PROVINCIAUX
DES MINES

MONSIEUR LE PRÉSIDENT, MESSIEURS LES MINISTRES PROVINCIAUX,
MESDAMES ET MESSIEURS. JE M'APPELLE ALAN COOPE ET C'EST POUR MOI
UN HONNEUR ET UN PLAISIR DE M'ADRESSER À VOUS EN QUALITÉ DE
PRÉSIDENT DE L'ASSOCIATION GÉOLOGIQUE DU CANADA.

L'ASSOCIATION REPRÉSENTE 3000 GÉOSCIENTIFIQUES DE TOUTES LES
PROVINCES ET DES TERRITOIRES DU CANADA. ELLE S'OCCUPE DE TOUTES
LES DISCIPLINES DE LA GÉOSCIENCE ET CONSTITUE UN CARREFOUR UNIQUE
POUR LA MISE EN VALEUR, LA DIFFUSION ET LE PROGRÈS DES CONNAIS-
SANCES GÉOLOGIQUES AU CANADA.

À LA CONFÉRENCE DES MINISTRES DES MINES, TENUE À YELLOWKNIFE EN
1984, J'AI DÉCRIT LE RÔLE FONDAMENTAL DE LA GÉOLOGIE PAR RAPPORT
À L'INDUSTRIE MINIÈRE CANADIENNE ET J'AI EXPLIQUÉ POURQUOI LA
GÉOLOGIE EST VRAIMENT "LA LOCOMOTIVE DE L'INDUSTRIE".

POUR DIVERSES RAISONS ÉCONOMIQUES HORS DU CONTRÔLE DE NOTRE
INDUSTRIE NATIONALE, L'INDUSTRIE MINIÈRE CANADIENNE SUBIT LES
PRESSIONS DE LA CONCURRENCE MONDIALE. LES PRIX DE LA PLUPART DES
MÉTAUX EXPLOITÉS PAR LES PRODUCTEURS NORD-AMÉRICAINS SE SITUENT,
EN RÉALITÉ, À UN NIVEAU PLUS BAS QU'IL NE L'ONT ÉTÉ DEPUIS DES
DÉCENNIES.

LES BILANS TRADUISENT BIEN CETTE SITUATION.

L'INDUSTRIE A FAIT PREUVE DE BEAUCOUP D'HABILITE ET D'ESPRIT D'INNOVATION FACE A CES DIFFICULTES A COURT TERME ET CETTE INGENIOSITE DONNE DES RESULTATS SOUS FORME D'UNE PRODUCTIVITE ACCRUE ET D'UNE PERFORMANCE FINANCIERE AMELIOREE. NOUS AVONS AMELIORE NOTRE CAPACITE DE SOUTENIR LA CONCURRENCE ET LE CANADA A ACQUIS UNE REPUTATION DE PREMIER ORDRE COMME PAYS MINIER.

TOUTEFOIS, D'IMPORTANTES CHANGEMENTS SONT SURVENUS.

UN NOMBRE DE GISEMENTS MINIERES AUXQUELS LES MINEURS CANADIENS ONT TRAVAILLE PAR LE PASSE NE SONT PLUS RENTABLES. LA DECOUVERTE DE NOUVEAUX GISEMENTS EST INDISPENSABLE POUR QUE L'INDUSTRIE PUISSE MAINTENIR SON ELAN DANS L'AVENIR.

IL IMPORTE TOUTEFOIS DE SE RENDRE COMPTE QUE CES NOUVELLES DECOUVERTES NE POURRONT ETRE DE SIMPLES GISEMENTS MINIERES ORDINAIRES. IL NOUS FAUDRA DES GISEMENTS DE STATURE MONDIALE QU'ON POURRA EXPLOITER EFFICACEMENT ET EN FAISANT CONCURRENCE A DES GISEMENTS SITUES DANS D'AUTRES REGIONS DU MONDE.

LE CANADA POSSEDE DES GISEMENTS DE STATURE MONDIALE

LES GISEMENTS DE CETTE QUALITÉ DÉCOUVERTS IL Y A DE NOMBREUSES ANNÉES ONT DONNÉ NAISSANCE À NORANDA, COMINCO, HOLLINGER, MCINTYRE, DOME MINES, HUDSON BAY MINING AND SMELTING, INCO, FALCONBRIDGE ET BUCHANS MINING COMPANY. D'AUTRES ONT ENTRAÎNÉ LA CRÉATION DE KERR ADDISON, BRUNSWICK, THOMPSON CAMP, IRON ORE, RIO ALGOM, DENISON, KIDD CREEK, BETHLEHEM ET LORNEX. LES GISEMENTS DE POTASSE ET D'URANIUM DE SASKATCHEWAN AINSI QUE LES GISEMENTS DE CHARBON PLUS À L'OUEST SONT DES RESSOURCES EXTRÊMEMENT IMPORTANTES DANS L'ENSEMBLE. JE NE LES MENTIONNE PAS TOUTES ET IL Y EN A BEAUCOUP PLUS À DÉCOUVRIR.

COMMENT POUVONS-NOUS AFFIRMER QU'IL Y A D'AUTRES GISEMENTS À DÉCOUVRIR?

DES DOCUMENTS L'AFFIRMENT ET NOTRE COMPÉTENCE ACCRUE EN MATIÈRE D'EXPLORATION NOUS LE DIT!

BON NOMBRE DE GISEMENTS SUR LESQUELS SE SONT ÉDIFIÉES NOS PRINCIPALES SOCIÉTÉS ÉTAIENT RELATIVEMENT FACILES À DÉCOUVRIR. DANS CERTAINS CAS, DES TECHNIQUES D'EXPLOITATION MINIÈRE ET DE TRAITEMENT ONT TRANSFORMÉ UNE MINÉRALISATION EN MINÉRAI, MAIS BON NOMBRE DE NOS DÉCOUVERTES PLUS RÉCENTES ONT EXIGÉ UNE COMPÉTENCE PLUS GRANDE DÉRIVÉE D'UNE TECHNOLOGIE D'EXPLORATION PLUS AVANCÉE ET D'UNE CONNAISSANCE PLUS POUSSÉE DE LA GÉOLOGIE DES GISEMENTS MINIERS.

PERMETTEZ-MOI DE VOUS DONNER QUELQUES EXEMPLES.

* LA CARTOGRAPHIE GÉOLOGIQUE ET UNE ANALYSE DÉTAILLÉE DES CONDITIONS SÉDIMENTAIRES AU PRECAMBRIEN DANS LA RÉGION DE **BLIND RIVER ET DU LAC ELLIOT** , AVANT LA DÉCOUVERTE D'URANIUM DANS LES ANNÉES 50, SE SONT TRADUITES PAR UNE EXPLOITATION ACCÉLÉRÉE DES RÉSERVES, TOUT SIMPLEMENT PARCE QU'ON A ÉTABLI UN LIEN DIRECT ENTRE LA NOUVELLE MINÉRALISATION ET LE MILIEU GÉOLOGIQUE.

* LES GISEMENTS D'URANIUM DU BASIN D'ATHABASCA EN SASKATCHEWAN SONT PARMIS LES PLUS RICHES DANS LE MONDE ENTIER. LES IMPORTANTES DÉCOUVERTES SUCCESSIVES DANS LES ANNÉES 70 ET AU DÉBUT DES ANNÉES 80 DÉCOULAIENT D'UNE ÉVALUATION GÉOLOGIQUE DES RAPPORTS GÉNÉTIQUES ET SPATIAUX ENTRE LES GISEMENTS ET, D'UNE PART, L'IRRÉGULARITÉ DE

BASE DE L'ATHABASCA ET, D'AUTRE PART, CERTAINES COUCHES ET STRUCTURE DU SOUBASSEMENT ARCHÉEN. L'EXPLOITATION ULTÉRIEURE DE CERTAINS DE CES GISEMENTS AU LAKE KEY ET AILLEURS AU CANADA A FAIT DE NOTRE PAYS LE PRINCIPAL PRODUCTEUR D'URANIUM AU MONDE. D'AUTRES DÉCOUVERTES ONT EU LIEU À COLLINS BAY, CIGAR LAKE, DAWN LAKE ET MCLEAN LAKE ET LES RÉSERVES Y ONT ÉTÉ ÉLARGIES.

* ON SAVAIT QU'IL Y AVAIT DE L'OR DANS LA RÉGION DEHEMLO DEPUIS 40 ANS. L'ATTRAIT ACCRU DE L'OR DANS LES ANNÉES 70 A ENTRAÎNÉ LA FORMULATION DE PRINCIPES GÉOLOGIQUES QU'ON NE TROUVAIENT PAS DANS LES PROGRAMMES D'EXPLORATION DES ANNÉES 40, 50 ET 60. IL A FALLU DU COURAGE POUR METTRE EN APPLICATION CES NOUVELLES IDÉES À HEMLO EN 1981, MAIS ON A PAR LA SUITE OBTENU DE NOUVELLES RESSOURCES S'ÉTABLISSANT À PLUS DE 20 MILLIONS D'ONCES.

* DANS LA MÊME VEINE, LA RECHERCHE GÉOLOGIQUE SUR LES IMPOSANTS GISEMENTS DE SULFURE DE BASE, EFFECTUÉE EN GRANDE PARTIE PAR LES GÉOLOGUES CANADIENS, A PERMIS DE METTRE AU POINT UN MODÈLE POUR LES GISEMENTS MINIERS. GRÂCE À CE MODÈLE ON A DÉCOUVERT LES GISEMENTS AVEUGLES DE ANSIL ET MILLENBACH AU QUÉBEC, À DES PROFONDEURS RESPECTIVES DE 4000 ET 2300 PIEDS.

* LA CARTOGRAPHIE GÉOLOGIQUE ET LES ÉTUDES MÉTALLOGÉNIQUES EFFECTUÉES PAR DES GÉOLOGUES GOUVERNEMENTAUX EN VERTU DE L'ACCORD ENTRE LE CANADA ET TERRE-NEUVE, PUIS L'EXPLO-
RATION INTELLIGENTE EFFECTUÉE PAR UNE IMPORTANTE SOCIÉTÉ
MINIÈRE ONT ENTRAÎNÉ LA DÉCOUVERTE DU GISEMENT
CHETWYND . L'EXPLORATION EN COURS A PERMIS D'ÉVALUER À
PRÈS DE 10 MILLIONS DE TONNES LA MINÉRALISATION AURIFÈRE
VALABLE DANS CETTE RÉGION QUI N'AVAIT JAMAIS PRODUIT
D'OR.

TOUS CES EXEMPLES ILLUSTRENT L'IMPORTANCE FONDAMENTALE DE LA
RECHERCHE ET DU DÉVELOPPEMENT GÉOLOGIQUES ET LA NÉCESSITÉ D'AMÉ-
LIORER CONSTAMMENT NOTRE COMPÉTENCE EN MATIÈRE DE GÉOLOGIE.
HEMLO, CHETWYND, KEY LAKE, CIGAR LAKE ET D'AUTRES SONT LA PREUVE
QU'IL RESTE DES GISEMENTS DE STATURE MONDIALE À DÉCOUVRIR. LES
VASTES CONNAISSANCES ISSUES D'UNE RECHERCHE GÉOLOGIQUE ADÉQUATE
ET PRODUCTIVE, COMME CE FUT LE CAS DANS LES EXEMPLES DONNÉES, ONT
DÉBOUCHÉ SUR LA DÉCOUVERTE DE NOUVELLES RESSOURCES PARMIS LES-
QUELLES SE TROUVAIENT D'IMPORTANTS GISEMENTS DONT L'EXISTENCE
N'AURAIT MÊME PAS ÉTÉ SOUPÇONNÉE ET QU'ON AURAIT PAS CHERCHÉS.

LA RECHERCHE ET LE DÉVELOPPEMENT GÉOLOGIQUES PRODUCTIFS DE CE
GENRE SONT INDISPENSABLES À UNE INDUSTRIE MINIÈRE FIABLE ET
PROGRESSIVE

IL Y A UN AUTRE ASPECT DES DÉCOUVERTES MINIÈRES QUI MÉRITE QU'ON S'Y ARRÊTE.

LES PROGRÈS TECHNIQUES ET SCIENTIFIQUES S'ENCHAÎNENT HABITUELLEMENT. L'ÉVOLUTION TECHNOLOGIQUE PRODUIT SOUVENT DE NOUVELLES DONNÉES QUI ENTRAÎNENT LA SOLUTION DE PROBLÈMES SCIENTIFIQUES, CE QUI SE TRADUIT PAR DES PROGRÈS SCIENTIFIQUES. CETTE CONSTATATION EST VALABLE TANT POUR LA GÉOSCIENCE QUE POUR LES AUTRES DISCIPLINES DES SCIENCES ET DU GÉNIE.

LE CANADA A DEPUIS LONGTEMPS LA RÉPUTATION D'ÊTRE À L'AVANT-GARDE DE L'INVENTION ET DE LA MISE EN OEUVRE D'UNE MULTITUDE DE TECHNIQUES D'EXPLORATION. UN DES PLUS IMPORTANTS DOMAINES DANS LEQUEL LA COMPÉTENCE CANADIENNE EST MANIFESTE EST CELUI DES MÉTHODES GÉOPHYSIQUES D'EXPLOITATION MINIÈRE.

UN GRAND NOMBRE DE GISEMENTS MINIER CONNUS DANS LE SOL CANADIEN RÉAGISSENT À DES MÉTHODES DE SONDAGE ÉLECTRIQUE, MAGNÉTIQUE ET RADIO MÉTRIQUE.

CETTE CARACTÉRISTIQUE DE NOTRE PATRIMOINE MINIER INCONTESTABLE ET UNE RÉGLEMENTATION FAVORABLE DANS LE SECTEUR MINIER SONT LES PRINCIPALES RAISONS DE L'EXISTENCE ET DE L'ÉVOLUTION DE NOTRE COMPÉTENCE DANS LE SECTEUR GÉOPHYSIQUE. AU CANADA, CETTE COMPÉTENCE PORTE ESSENTIELLEMENT SUR LES PROBLÈMES D'EXPLORATION PROPREMENT CANADIENS EN MATIÈRE DE GÉOLOGIE ET SUR LE MILIEU.

PAR EXEMPLE,

- * LA MÉTHODE **INPUT** ,QU'ON PEUT CONSIDÉRER COMME LA TECHNIQUE ÉLECTROMAGNÉTIQUE AÉRIENNE LA PLUS SÛRE, À D'ABORD ÉTÉ MISE AU POINT AU CANADA AU DÉBUT DES ANNÉES 60 ET, DE NOS JOURS, DES EXPLORATEURS DE TOUTES LES RÉGIONS DU MONDE LIBRE S'EN SERVENT. NÉANMOINS, 20 DES 23 (87 P. 100) DÉCOUVERTES ÉCONOMIQUEMENT IMPORTANTES ATTRIBUÉES À LA MÉTHODE INPUT SE TROUVENT AU CANADA.

- * EN RAISON DU CARACTÈRE PARTICULIER DES CONDITIONS GÉOLOGIQUES ET PHYSIQUES DANS NOTRE PAYS, LES MÉTHODES D'EXPLORATION GÉOPHYSIQUE INVENTÉES À L'ÉTRANGER NE SONT PAS TOUJOURS APPLICABLES ET EFFICACES CHEZ NOUS. TOUTEFOIS, DES GENS TRÈS COMPÉTENTS, QUE LES SUCCÈS DE LA TECHNOLOGIE GÉOPHYSIQUE ONT ENTRAÎNÉS À EXERCER LA PROFESSION DE GÉOLOGUE AU CANADA, PEUVENT FACILEMENT AMÉLIORER ET ADAPTER LES MÉTHODES MISES AU POINT DANS D'AUTRES PAYS AFIN DE RÉGLER DE MANIÈRE PRODUCTIVE DES PROBLÈMES CANADIENS. LES TECHNIQUES ÉLECTROMAGNÉTIQUES ET DE POLARISATION INDUITE À PÉNÉTRATION PROFONDE FURENT INVENTÉES À L'ÉTRANGER, MAIS LE MATÉRIEL POUR CES MÉTHODES QUI EST FABRIQUÉ À L'HEURE ACTUELLE AU CANADA EST DE PLUS PERFECTIONNÉS ET FACILE À ADAPTER À L'EXPLORATION DANS CE PAYS.

DES PROGRÈS ONT LIEU DANS D'AUTRES SECTEURS TECHNOLOGIQUES AFIN DE FACILITER LA PROSPECTION DANS DIVERSES CONDITIONS PROPRES AU CANADA.

* LA TECHNIQUE DU PRÉLEVEMENT GEOCHIMIQUE D'ÉCHANTILLONS DU SÉDIMENT DES LACS A ÉTÉ MISE AU POINT AU CANADA POUR SERVIR D'INSTRUMENT DE RECONNAISSANCE RÉGIONALE ADAPTE AUX CONDITIONS PHYSIOGRAPHIQUES PROPRES À DE VASTES RÉGIONS DE CE PAYS. LA MÉTHODE A ÉTÉ PERFECTIONNÉE PAR DES ÉQUIPES DE RECHERCHE, PAR DES ÉQUIPES DE GÉOLOGUES FÉDÉRAUX ET PROVINCIAUX ET PAR DES SERVICES UNIVERSITAIRES. ELLE A PERMIS DE DÉCELER INITIALEMENT PLUSIEURS GISEMENTS MINIERS, Y COMPRIS LE GISEMENT DE CUIVRE, DE ZINC ET D'ARGENT D'AGRICOLA LAKE DANS LES TERRITOIRES DU NORD-OUEST ET LES GISEMENTS DE ZIRCONIUM, YTTRIUM, NIOBIUM ET DE BERYLLIUM, QUE SEULES RECELENT LES TERRES RARE, AUX LACS BRISSON ET STRANGE À LA FRONTIÈRE DU LABRADOR DU QUÉBEC.

* LE FORAGE DES TERRAINS DE RECOUVREMENT ET LE PRÉLEVEMENT D'ÉCHANTILLONS DANS LES DÉPÔTS GLACIAIRES QUI FORMENT UNE COUCHE ÉPAISSE ET VASTE SUR D'IMPORTANTES ZONES MINÉRALISÉES À PLUSIEURS ENDROITS DU BOUCLIER CANADIEN ONT ÉTÉ UN FACTEUR CLÉ DANS LA DÉCOUVERTE D'AU MOINS QUATRE GISEMENTS D'OR AU COURS DES DERNIÈRES ANNÉES. IL S'AGIT

NOTAMMENT DE LA GOLDEN POND EAST ZONE DANS LE CANTON CASABERARDI AU QUÉBEC, DES GISEMENTS BELL CREEK ET AQUARIUS EN ONTARIO ET DU GISEMENT EP EN SASKATCHEWAN.

À L'HEURE ACTUELLE, LA TECHNIQUE DE FORAGE DES TERRAINS DE RECOUVREMENT EST ENCORE RELATIVEMENT RUDIMENTAIRE, MAIS LES SUCCES QU'ELLE A CONNUS STIMULENT LA RECHERCHE SUR (A) LA DISTRIBUTION DE L'OR ET D'AUTRES MÉTAUX DANS LES DÉPÔTS GLACIAIRES, (B) LE PERFECTIONNEMENT DU FORAGE ET (C) L'ÉTUDE PLUS POUSSÉE DES ÉCHANTILLONS ET LE TRAITEMENT ANALYTIQUE. **CES TRAVAUX ENTRAÎNERONT INÉVITABLEMENT DES PROGRÈS QUI FAVORISERONT DIRECTEMENT UNE PROSPECTION PLUS EFFICACE ET PLUS SATISFAISANTE DANS LES RÉGIONS GLACIAIRES ET À RECOUVREMENT ÉPAIS DU CANADA .**

CES QUELQUES EXEMPLES DÉMONTRENT CLAIREMENT QUE L'EXISTENCE D'UNE EXCELLENCE TECHNOLOGIQUE EN MATIÈRE D'EXPLORATION DANS CE PAYS EST TRÈS AVANTAGEUSE POUR LE CANADA ET L'INDUSTRIE MINIÈRE CANADIENNE. LES PROGRÈS DANS LE SECTEUR DES TECHNIQUES GÉOPHYSIQUES SONT PLUS ÉVIDENTS, MAIS D'AUTRES DOMAINES COMME CEUX DU FORAGE, DE LA GÉOCHIMIE, DE LA TÉLÉDETECTION, DE L'INTERPRÉTATION DES DONNÉES DE SATELLITES ET DES TECHNIQUES D'INTERPRÉTATION INFORMATISÉES SONT ÉGALEMENT IMPORTANTS ET MÉRITENT NOTRE ATTENTION SI L'ON VEUT QUE LE CANADA CONSERVE UNE COMPÉTENCE VALABLE EN MATIÈRE D'EXPLORATION.

IL Y A UN ASPECT ENCORE PLUS IMPORTANT.

EN Y REFLECHISSANT BIEN, ON SE REND COMPTE QUE LE FACTEUR CAPITAL SUR LE PLAN DE LA MISE EN APPLICATION DE LA COMPETENCE TECHNIQUE ET TECHNOLOGIQUE EST LA COMPRÉHENSION DE LA NATURE ET DES PROPRIÉTÉS DES GISEMENTS MINIERES RECHERCHÉS.

LA TECHNOLOGIE DE POINTE EST PLUS EFFICACE LORSQUE LES MÉTHODES SONT CONÇUES ET UTILISÉES POUR DÉCELER DES CARACTÉRISTIQUES PRÉCISES DE LA CIBLE VISÉE.

LA COMPETENCE SUR LE PLAN DE L'UTILISATION EST AUSSI IMPORTANTE QUE LA TECHNOLOGIE PROPREMENT DITE. IL EST PLUS FACILE DE DÉCOUVRIR DU MINÉRAI LORSQU'ON SAIT CE QUE L'ON CHERCHE.

LA RECHERCHE ET LE DÉVELOPPEMENT GÉOLOGIQUES PERMETTENT D'ACQUÉRIR CETTE CONNAISSANCE DU GISEMENT MINIER RECHERCHÉ. LA COMBINAISON DE CETTE RECHERCHE ET DE CE DÉVELOPPEMENT GÉOLOGIQUES AU PROGRES TECHNOLOGIQUE DONNERA LES MEILLEURS RÉSULTATS POUR LA DÉCOUVERTE DE GISEMENTS MINIERES DE STATURE MONDIALE AU CANADA. DÉJÀ, ON PEUT FACILEMENT FAIRE UN LIEN ENTRE LES NOUVELLES DÉCOUVERTES DANS NOS CAMPS MINIERES ÉTABLIS OU DANS LES NOUVEAUX MILIEUX GÉOLOGIQUES ET L'AMPLEUR OU LE DEGRÉ DE LA COMBINAISON DES DEUX ÉLÉMENTS DONT IL A ÉTÉ QUESTION.

LA RECHERCHE ET LE DÉVELOPPEMENT GÉOLOGIQUES AINSI QUE LES
PROGRÈS TECHNOLOGIQUES EN MATIÈRE D'EXPLORATION SONT LES DEUX
FONDEMENTS À LONG TERME DE L'EXISTENCE D'UNE INDUSTRIE CONCUR-
RENTIELLE. ON NE DOIT NI LES ABANDONNER NI LES RELEGER AU
SECOND PLAN AU MOMENT MÊME OÙ L'INDUSTRIE REGLE HABILEMENT LES
PROBLÈMES À COURT TERME ACTUELS.

LES INVESTISSEMENTS DANS LA RECHERCHE ET LE DÉVELOPPEMENT GÉOLO-
GIQUES ET DANS LE PROGRÈS TECHNOLOGIQUE EN MATIÈRE D'EXPLORATION
ENTRAÎNERONT LA DÉCOUVERTE DE GISEMENTS DE STATURE MONDIALE,
CONTRIBUERONT À METTRE EN VALEUR LA POSITION DU CANADA COMME PAYS
MINIER ET SE TRADUIRONT PAR DES PROFITS, DES EMPLOIS ET UNE
PROSPÉRITÉ ÉCONOMIQUE.

42nd ANNUAL CONFERENCE OF PROVINCIAL
MINISTERS OF MINES

Brief

Prospectors and Developers Association of Canada

Prospectors and Developers Association of Canada



CHARLOTTETOWN, P.E.I.
September 17, 1985

A NEW ERA OF COOPERATION

SUMMARY

The Canadian mineral industry can, is and will survive. Facts show that prospecting continues to find as many ore bodies now, as it has for the last 40 years.

Large numbers of unemployed professionals form the new entrepreneurs of today. They will form the spearhead of new mineral development, if Canada institutes the following policies:

- I Improve financing of exploration to speed up discovery of more, higher grade, deposits
- II Expand and improve the database
- III Expand and improve the areas available to prospecting and development
- IV Extend development and production opportunities to more Canadians

Facts show that governments benefit most from new mine development. Let's cooperate to discover more, new, higher grade mines.

INTRODUCTION

During good times, in a frantic rush to increase each individual's share of the expanding economic pie, there is a "them and us" attitude among government, labour and management. But now times are tough! Individuals, small companies, large corporations, entire industries, provinces and even countries are fighting to survive, commercially and economically.

The distinction between "them and us" is less clear now and many of us in our search to survive, finds himself in more than one camp. Government is hiring people from industry to give them more cost and productivity oriented management, retirees from government

are consulting for industry, all sectors of the economy are producing unemployed expertise through lay-offs and early retirement, and this expertise has no choice but to go into business for itself. These are the new entrepreneurs. Suddenly we realize that entire industries could diminish or disappear. "THE CANADIAN MINERAL INDUSTRY CAN, IS AND WILL SURVIVE."

In the real world survival means "profit", and profit benefits every sector; workers, governments and corporations. Profits equal revenues minus costs. Profits can be realized or improved only by increasing revenues and/or reducing costs. Costs have been cut; the easier reductions are complete; there is still more to be done; but it will be tougher and slower. Revenues in the mineral business consist of ore grade and metal price. We learned long ago that we cannot control metal prices. So we need higher grades. This translates into the fact that better grade mineral deposits are needed in Canada to support our high standard of living.

PROSPECTORS AND DEVELOPERS CONTRIBUTION TO MINERAL DISCOVERY

Quite often, "common knowledge" develops during the course of time for which a sound basis in fact does not exist. For example, it is generally accepted that prospecting is becoming a less effective exploration tool because everyone believes that the easily discovered deposits have been found.

This is generally accepted "common knowledge", but has anyone bothered to check it lately?

A very interesting study was recently completed at Queen's University entitled "Base Metal Supply Potential in Northern and Southern Canada" by Leo Johannes Verleun. This study presents a financial analysis of 271 mineral deposits in Canada and some other very interesting data.

Of the 271 mineral deposits studied, 55 were discovered prior to 1946. Not surprisingly, 52 of these deposits were discovered by prospecting. Since 1946, some 216 deposits were discovered of which 151 were by prospecting.

The trend within these 216 deposits shows that for every five-year period between 1946-1977, there have been discovered 12, 18, 10, 21, 19 and 19 deposits respectively - hardly indicative of a declining effectiveness of prospecting.

Of course, geology, geophysics and geochemistry have shown increasing effectiveness during these years. But the startling fact is that prospecting has held its own.

There aren't any data presented for Canadian exploration expenditures prior to World War II when nearly all discoveries were by prospecting. However there is some indication from the trend since 1946, which shows that the average cost per discovery has been increasing with time from \$24.3 million up to 1961, to \$31.2 million up to 1969, and attaining \$33.8 million by 1977. If one projects this trend back to pre-1946, the average cost to discover one of the 55 deposits before World War II was probably \$20 million or less, expressed in 1983 dollars.

These data apply to base metal exploration, but there is no reason why the same degree of attention and financing cannot carry forward and improve the success rate of gold discovery during the eighties and nineties.

This is particularly apparent in such lines of research as lithogeochemistry which have seen great strides with the advent of rapid analytical techniques. However, this is just the beginning and we must not relax our efforts in geoscience research if we wish to bring gold exploration to the higher technological levels that base metal exploration presently enjoys.

HOW AND WHY IT HAPPENED FOR BASE METALS

Another form of "common knowledge" currently circulating in some parts of Canada, particularly reflected in the government publication entitled "The Canadian Minerals and Metal Sector: A Framework for Discussion and Consultation", is the concern that Canada has been the birthplace of advanced technology which is now being used against us by other nations.

Once again, rather than listening to such comments, let us examine the facts.

This may be done easily by referring to a series of Distinguished Lectures delivered by Dr. Harold O. Seigel to the CIMM during 1982-1983. Dr. Seigel points out that from 1948-1982, Canada was the world centre of modern geophysical research and development, which led to a phenomenal success rate in base metal exploration.

But from the first airborne EM flight by Hans Lundberg in 1946, through the McPhar system in 1951, Hunting system in 1953, the Rio Tinto, Newmont and Aeromagnetic systems, to the INPUT system in 1955-1960, all were financed by foreign money and mostly inspired by foreign minds.

Therefore, why did it happen in Canada? Simply because there was a fertile environment for this kind of entrepreneurial endeavor. Canada had the right kind of fiscal, political and financial climate.

With the return of this pioneer spirit of tax incentive, reward for individual success, encouragement of foreign investment and recognition of the efforts of individuals like the prospector, Canada can see again the base metal successes of the 1950's and the 1960's repeated for gold in the 1980's and 1990's.

The facts show that prospecting is as effective a tool in mineral exploration as it ever was! Now we need the leadership to restore the junior mining sector to a level which will allow Canada to benefit from the efforts of the thousands of prospectors out there who wish to get on with the job.

The Prospectors and Developers Association believes that it has some of the policies which will lead the way.

OUR RECOMMENDATIONS FOR NEW POLICIES

Prospectors' ranks are swollen with professionals of every kind, who find themselves laid-off or retired early. They come from corporate, government and labour ranks and they are the new entrepreneurs of today. They have expertise, experience, energy and a desire to prove they can do it alone. If this nation can put the means of achieving their objectives into their hands, a great force will grow and move the country. To prospect, discover and develop the higher grade deposits that Canada needs, four main policy thrusts must be directed:

I FINANCE DISCOVERY by

- a) Continued flow through share financing of Canadian Exploration Expenditures (CEE) via non-resource income deductions and by increased depletion allowance to 167% for non-producing prospectors and explorers.
- b) Reward prospectors with capital gains treatment of all proceeds from the sale of mineral properties in recognition of the high risks and arduous living/working conditions.
- c) Extend the expenditure period of CEE funds raised in any tax year, to include the first two months of the following year.
- d) Streamline and simplify regulatory procedures for flow through share financing, to assist small companies and individuals to raise money in this manner.

II EXPAND AND IMPROVE THE DATABASE by

- a) Continuation, expansion and extension of Economic and Regional Development Agreements (ERDA) to improve geoscientific knowledge of the earth's crust in Canada. Canada's geological surveys (federal and provincial) are (and should continue to be) the best in the world.
- b) Improve access to the Database by EDP (electronic data processing).

III EXPAND AND IMPROVE THE AVAILABILITY OF PROSPECTIVE AREAS OF CANADA by

- a) Maintaining the "multiple land use" concept in federal and provincial parks. Acceptability of mining within the concept of park environment has been proven. Scare tactics from extremists who don't care about creating jobs for the unemployed are no longer acceptable.
- b) Expand infrastructure by improving access to remote areas. Roads are the most important means of reaching Canada's undeveloped mineral resources. Roads built for or by resource development quickly have become used by recreationists.

IV EXTEND THE DEVELOPMENT AND PRODUCTION OPPORTUNITIES TO MORE CANADIANS by

- a) Application of flow through share financing to Canadian Development Expenditures (CDE) by application of non-resource income deductions at 167% depletion rate for non-producing prospectors and developers. Keep the control of newly discovered resources in Canadian hands.
- b) Allow "after-tax financing" of new mine assets for non-producing Canadian prospectors and developers.'

Our studies show that the combination of IV a) and b) will give a rate of return to non-producing prospectors and developers of 20.7%, which is comparable to that enjoyed by taxable producing Canadian corporations of 20.2%. Look at the vastly improved economic conditions which arise from these recommendations and which are displayed on the next page using a typical gold mine model.

PRODUCING
TAXABLE CORPORATION

RATE OF RETURN
ON INVESTMENT

20.2%

Financing: 1/3 equity / 2/3 debt
PRESENT TAX RULES

NON-PRODUCING
JUNIOR PROSPECTING &
DEVELOPMENT COMPANY

RATE OF RETURN
ON INVESTMENT

6.6%

Financing: 1/3 equity / 2/3 debt
PRESENT TAX RULES

MINE MODEL*

Ore Reserve	- 2,412,000 Tons
Grade	- 0.16 oz gold/ton
Mill Rate	- 800 TPD
Mill Recovery	- 95%
Debt Cost	- 12% Interest
Mining Cost	- \$40/ton
Gold Price	- \$500/oz.

Capital Costs: **

Explor/Develop.	- \$26,000,000
Mining Machinery	- \$18,000,000
Mill	- \$ 9,500,000

** Net of \$6,000,000
preproduction revenue.

* Based on an actual mine
operating in Canada now.

GOVERNMENTS
FEDERAL/PROVINCIAL/MUNICIPAL

RATE OF RETURN
ON INVESTMENT

51%

Financing: by flow through
shares + 2/3 depletion allow-
ance on CEE and CDE, and
AFTER TAX financing of
new mine assets.

TAX RULES
PROPOSED BY
Prospectors &
Developers
Association

NON-PRODUCING
JUNIOR PROSPECTING &
DEVELOPMENT COMPANY

RATE OF RETURN
ON INVESTMENT

20.7%

Financing: by flow through
shares + 2/3 depletion allow-
ance on CEE and CDE, and
AFTER TAX financing of
new mine assets.

Notice that the real winners in the discovery of such a mine are governments, which show a rate of return on investment of 35% on newly created personal income, corporate income and mining taxes. Our brief entitled "Supplement to MAC Position paper on ECONOMIC RENEWAL AND CANADIAN MINING", as appended here, shows the rate of return at 29% when gold price is \$450 per ounce and explains the derivation of the 35% number.

BUT there are other taxes, levies and hidden charges which accrue to government as revenue from such a new mine. We have not been able to account for them all, but if one adds capital tax, property tax, school tax, federal and provincial sales taxes and proceeds from the sale of hydro-power, the rate of return on investment rises to 51%. Derivation of this number is appended.

CLEARLY - NEW MINES BENEFIT EVERYONE - ESPECIALLY GOVERNMENTS

$$\boxed{\text{PROFITS}} = \boxed{\text{REVENUES}} - \boxed{\text{COSTS}}$$

$$\boxed{\begin{array}{l} \text{TAXES FOR GOVT'S} \\ \text{\& DIVIDENDS FOR} \\ \text{SHAREHOLDERS} \end{array}} = \boxed{\begin{array}{l} \text{FOREIGN EXCHANGE} \\ \text{FOR CANADA} \end{array}} - \boxed{\begin{array}{l} \text{WAGES FOR CANADIANS +} \\ \text{BUSINESS FOR SUPPLIERS +} \\ \text{MORE TAXES FOR GOVT'S} \end{array}}$$

CONCLUSION

We have lobbied our policies at the federal level of government for many years. We have seen some progress and we hope to see more. The Prospectors and Developers Association urges the provincial governments of Canada to take seriously the theme of this conference and to support us in the recommendations for "A New Era of Cooperation".

We are prepared to meet immediately with provincial and federal government representatives to implement this cooperation. Let's discover, develop, put more mines of higher grades into production. With such high rates of return as their goal, surely our governments have enough confidence in this nation to participate in the financing of its mineral resources.

L.C. Kilburn/ul
July 29, 1985

MINE MODEL

TAXES DERIVED FROM A NEW MINE (\$000's)

Year	Income tax deferred Through "flow-through" (Note 1)	"Payroll taxes" collected (Note 2)	Corporate income and mining taxes collected from mining company	Corporate Capital Tax (Note 3)	Property and School Taxes (Note 4)	Sales Taxes Federal and Provincial	Hydro-Power Cost (Note 5)	Net
1	(7500)	2576		100	12	200	750	(\$3862)
2	(7500)	2576		100	12	200	750	(3862)
3		2392		100	12	200	750	3454
4		2392	599	100	12	200	750	4053
5		2392	2407	100	12	200	750	5861
6		2392	4306	100	12	200	750	7760
7		2392	4178	100	12	200	750	7632
8		2392	5237	100	12	200	750	8691
9		2392	4833	100	12	200	750	8287
10		2392	3428	100	12	200	750	6882
11		2392	2012	100	12	200	750	5466
Total	(15000)	26680	\$27000	1100	132	2200	8250	\$50362
Notes								
								Rate of return (note 6) - 51%

1. Tax relief to investor in respect of deduction of preproduction development expenses flowed through, together with earned depletion.
2. Personal income taxes, CPP, UIC, and WCB payments relating to employment at the mine.
3. Corporate Capital Tax may rise in later years if dividends are not paid.
4. Assumes no change in assessment or mill rate.
5. Assumes no increase in hydro rate.
6. This is a constant dollar calculation as no increases due to inflation have been added. Ontario mining tax rules have been used.

Supplement
to
MAC Position Paper On
ECONOMIC RENEWAL AND
CANADIAN MINING



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H. D. Hunt
President

J. W. Griffith
General Manager

The Honourable Robert Layton, P.C., M.P.
Minister of State (Mines)
House of Commons
OTTAWA, Ontario

January 29, 1985

Dear Mr. Layton:

The meeting in Ottawa on January 21, with you and your advisers and representatives of the mining industry was highly constructive. Our subsequent meeting with the Minister of Finance provided considerable encouragement for ultimate success of the consultation process initiated by the government. We thank you for the opportunity to present our views.

This submission has been prepared to supplement the position paper titled "ECONOMIC RENEWAL AND CANADIAN MINING", authored largely by the Mining Association of Canada. The M.A.C. has consulted fully with this Association in the preparation of the mining industry brief and while we endorse contents of the report, because of unique features of our sector, we believe it essential that we highlight our special concerns.

To illustrate overall benefits to society of new mine development, we have annexed a letter from Mr. R. B. Parsons, of Price Waterhouse, together with a summary of computer studies completed on our behalf; most of the back-up material was forwarded to you with our letter of October 26th. Exhibit B shows all revenue flows to government which more than exceeds revenue deferred or foregone. Government is clearly a winner with respect to incentives proposed.

Fragility of all 'start-up' enterprises requires somewhat different treatment under the tax system in the application and implementation of specific incentives. With our letter of October 26th, we forwarded to you supporting computer modelling by Price Waterhouse, which highlights disparity in terms of present values for internal rates of return (IRR) on equity investments in profitable mining producers as compared to that for the junior non-producer. Recent computer studies undertaken at E.M. & R., confirm results of the Price Waterhouse study. The following recommendations are designed to alleviate the problem.

Inequitable tax treatment of junior companies is illustrated in Parsons' models A1 and B1 in Exhibit A; IRR under existing tax rules for a junior company is 10.9%, while that for a profitable producer is 24.1%. The problem is, therefore, what incentives can be provided to junior companies via the tax system to close this gap and make production viable for the discoverer.

Because of favourable effects on government revenue and employment, we believe the solution proposed will be acceptable to the Minister of Finance. Our study indicates that Model J5 would be relatively simple to legislate and administer and would provide incentives only slightly less than the IRR now available to a profitable major producer. To achieve this objective, several aspects of the financing mode require tax changes to make J5 workable. First, income bonds for debt financing would have to be reinstated; and to eliminate abuses of the past, this financing instrument would be restricted to Class 28 (new mine) assets. Other changes necessary would be with respect to flow through shares for Canadian Exploration Expense (CEE) and Canadian Development Expense (CDE); for individual tax payers only, earned depletion for CEE plus CDE would be written off against any income at 2/3rds rather than the present 1/3rd. For corporations the rate would remain at 1/3rd.

Precedents in recent tax policy support success of the model proposed in J5. As a matter of fact, taxpayers in Quebec are now entitled to the 2/3rds deduction. As a consequence, exploration activity in Quebec has exceeded that for all other provinces combined. Onerous risks of hard rock exploration warrant such an incentive.

In our discussions in Ottawa, we mentioned problems many companies are encountering in meeting time restrictions to complete work under existing flow through drilling programs. In the interest of efficiency, it is essential that time restraints on current flow through drilling ventures be replaced with a system that is compatible with field realities. At his request, a letter proposing solutions to this, as well as other problems, was forwarded to Mr. Glen Jenkins, ADM Finance, under date of June 22nd. For convenience, we have annexed copies of this correspondence.

The MAC Position Paper discusses other aspects of the present tax system that require change. With due consideration for the proposals herein, which are in complete harmony with MAC recommendations, our Association subscribes fully to the scope and substance of the MAC Position Paper.

The interests of prospectors, junior mines and shareholders who support exploration activity have been neglected by the tax system for about 15 years. This is surely one reason why new mines are not being discovered and developed at historical rates. We believe our organization can make a significant contribution to the consultation process and we offer you our full support and cooperation in your efforts to devise policies designed to revive the mineral sector. We request a meeting at the earliest opportunity with you to discuss this submission.

Yours sincerely


H. Douglas Hume

President

c.c.

The Hon. Michael Wilson, Minister of Finance
Dr. William James, MAC
Mr. Bill Beard, EMR
Mr. Derek Williams, Finance
Dr. George Miller, MAC

December 14, 1984

PRIVATE AND CONFIDENTIAL

Mr. H. Douglas Hume
President
Prospectors and Developers Association
Suite 420
74 Victoria Street
Toronto, Ontario
M5C 2A5

Dear Doug:

The purpose of this letter is to summarize various matters which you and I have discussed in general terms in recent weeks with respect to how a new mining operation can benefit the local, regional, and national economies. Although our discussions concerning both economic "spin-offs" and the favourable impact of a new mining operation on net federal and provincial tax revenues have been of a relatively preliminary nature, based on certain computer runs which you have asked me to perform on our mine model, and based on our knowledge of other related studies which have been completed, it is apparent that certain tax changes which assist in the development of new mines can affect government revenues in a very positive way.

As you know, one of the main reasons for the federal government's reluctance to consider certain proposals for changes to the income tax legislation relates to the size of the government's deficit. We have witnessed indications that the government often seems to look at proposed changes only in terms of the obvious and immediate loss of tax revenues, and does not always appear to consider the favourable impact to be realized in respect of overall tax revenues.

It seems to me that the mining industry is going to have to demonstrate to the government that certain tax proposals actually benefit the government in the long run, where such changes result in a net increase in the level of economic activity within Canada. Exhibit B lists the various ways whereby the government's revenue base can be enhanced through such a net increase in activity. There is no doubt that, given the slack in our economy in terms of unemployment and underutilized plant capacity, there

are excellent opportunities for the government to increase economic activity and tax revenues through the implementation of results-oriented tax changes today.

In this regard, you have asked me to consider one set of proposed tax changes which the Association has discussed with Energy, Mines and Resources. Under this proposal, preproduction development expenses "flowed through" to an individual investor from a mining company would entitle the investor to a depletion deduction equal to $1/2$ or $2/3$ of the preproduction expenses.

As indicated in Exhibit A, such a change would help to partially mitigate an existing inequity in the tax legislation whereby there can be a substantial difference between the rate of return realized by a producing company as compared to a junior company with respect to the same mineral deposit.

The government's immediate reaction to the Association's proposal was that its tax revenues would be eroded in the early years of the project, because the investor would be sheltering otherwise taxable income. This reaction does not take into account the tax revenues which governments would collect throughout the life of the new mine developed by the junior company: some of these taxes are listed in Exhibit B.

Consider an extreme example, where the only additional taxes collected by the government related to the mining company's payroll. In the eighteen month preproduction period, 336 man years of work would be created. In the nine years of production, in this mine model, 156 workers would be employed on a full time basis. This additional employment in the economy would result in federal and provincial governments' collecting personal income tax, Canada Pension Plan contributions, unemployment insurance premiums, and workman's compensation premiums as indicated in Exhibit C. From the government's point of view, in this worst case scenario, the government realizes a 17% rate of return, measuring its future tax collections against taxes foregone in years 1 and 2. One can imagine how much this rate of return to the government would be increased if the other taxes in Exhibit B were taken into account. For example, taking into account, in addition to the personal income taxes noted above, corporate income and mining taxes payable by the mining company over the nine years of operations, the government's rate of return would increase to 29%. Still, this rate of return to the government is achieved without taking into account any of the non-income taxes payable by the mining company, and ignores the multiplier effect whereby individuals and companies, other than employees of the mining company and the mining company itself, would pay additional taxes.

An assessment of the total favourable effect on the government of a tax change such as the one mentioned above would be a fairly complex task. However, it is clear that the government can be a net winner with respect to proposed tax changes.


One cannot presume that government in all cases carries out appropriate cost/benefit analysis with respect to a proposed tax change. Indeed,

recent experience suggests that government sometimes does not seem to be inclined to carry out this kind of cost/benefit analysis, except with reference to often irrelevant "rules of thumb" and benchmarks. I believe that it behooves the mining industry to demonstrate to the government that certain proposed changes benefit the entire economy including the government.

With respect to a separate matter, you will recall that Bill Beard at Energy, Mines, and Resources suggested that we run our computer model on a "no tax" basis. Accordingly, as arranged, I have completed these runs: the results are set out in Exhibit E.

Please let me know if I can provide you with any additional information.

Yours very truly,

A handwritten signature in dark ink, appearing to read "R. B. Parsons". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

R. B. Parsons

RBP/hw

Enc.

Exhibit A

Prospectors and Developers Association
Tax Models
Comparative Summary of Internal Rates of Return

	<u>\$450</u> <u>gold</u>	<u>\$500</u> <u>gold</u>
A1 Mining company with no other operations. Existing tax rules.	6.6%	10.9%
B1 Mining company with other taxable operations. Existing tax rules.	17.5%	24.1%
J4 Mining company with no other operations. Exploration and preproduction development expense is flowed through to individual shareholders by issue of flow-through shares. <u>All</u> depletion is deductible against any source of income. Individual investor in flow-through shares entitled to earn depletion at rate of 1/2 instead of 1/3. Depletion rate for company remains at 1/3. Machinery and equipment costs are financed by issue of income bonds.	13.3%	18.3%
J5 Same as J4, except individual investor in flow-through shares entitled to earned depletion at rate of 2/3 instead of 1/3. Depletion rate for mining company remains at 1/3.	15.4%	20.7%

Government Revenues Derived from a
New Mine

Direct taxes

1. Employee personal income tax
2. Canada Pension Plan contributions
3. Unemployment Insurance premiums
4. Workman's Compensation premiums
5. Unemployment insurance payout savings
6. Corporate income taxes
7. Mining tax
8. Corporate capital taxes
9. Municipal property and school taxes
10. Federal and provincial sales taxes
11. Fuel taxes and other energy taxes (including hydro)

"Multiplier" taxes

All of the above taxes paid by suppliers to the mining enterprise and its employees, including:

- drilling contractors and consultants
- construction contractors
- machinery and equipment manufacturers
- railway and other transportation
- hydro
- townsite

Mine Model
Taxes Derived from a New Mine
(\$'000's)

Year	Income tax foregone through "flow-through" (Note 1)	"Payroll taxes" collected (Note 2)	Net
1	(7500)	2576	(4924)
2	(7500)	2576	(4924)
3		2392	2392
4		2392	2392
5		2392	2392
6		2392	2392
7		2392	2392
8		2392	2392
9		2392	2392
10		2392	2392
11		2392	2392
Total	<u>(15000)</u>	<u>26680</u>	<u>11680</u>
Rate of return			17%

Notes

1. Tax relief to investor in respect of deduction of preproduction development expenses flowed through, together with earned depletion.
2. Personal income taxes, CPP, UIC, and WCB payments relating to employment at the mine.

Mine Model
Taxes Derived from a New Mine
(\$'000's)

Year	Income tax foregone through "flow-through" (Note 1)	"Payroll taxes" collected (Note 2)	Corporate income and mining taxes collected from mining company
1	(7500)	2576	
2	(7500)	2576	
3		2392	
4		2392	64
5		2392	892
6		2392	2433
7		2392	2428
8		2392	3502
9		2392	3300
10		2392	2585
11		<u>2392</u>	<u>1440</u>
Total	<u>(15000)</u>	<u>26680</u>	<u>16644</u>

Rate of return

Notes

1. Tax relief to investor in respect of deduction of preproduction development expenses flowed through, together with earned depletion.
2. Personal income taxes, CPP, UIC, and WCB payments relating to employment at the mine.

Prospectors and Developers Association
Tax Models
Comparative Summary of Internal Rates of Return

	<u>Income Tax and Mining Tax Applicable</u>	<u>Income Tax not Applicable. Mining Tax Applicable</u>	<u>No Income or Mining Tax</u>
Stand-Alone Mine, 100% Equity Financed			
\$450 Gold	6.6%	7.9%	8.7%
\$500 Gold	10.9%	12.9%	14.3%

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42^e CONFÉRENCE ANNUELLE DES MINISTRES
PROVINCIAUX DES MINES

Mémoire

Association des prospecteurs et exploitants du Canada

Association des prospecteurs et
exploitants du Canada



CHARLOTTETOWN (I-du-P.-É)
Le 17 septembre 1985

MÉMOIRE

42^e CONFÉRENCE ANNUELLE DES MINISTRES PROVINCIAUX DES MINES

LE 17 SEPTEMBRE 1985

CHARLOTTETOWN (Î.-P.-É.)

UNE NOUVELLE ÈRE DE COLLABORATION

RÉSUMÉ

L'industrie canadienne des minéraux peut survivre et survivra. En effet, les prospecteurs continuent de découvrir encore maintenant autant de gîtes minéraux qu'au cours des 40 dernières années.

Les nombreux professionnels sans emploi qui sont devenus les entrepreneurs d'aujourd'hui pourront relancer le développement de l'industrie minière si le Canada met en oeuvre les politiques suivantes :

- I Améliorer le financement des travaux d'exploration, afin d'accélérer la découverte d'un plus grand nombre de gisements de minéraux de meilleure qualité.
- II Développer et améliorer la base de données.
- III Étendre et améliorer les zones propices à la prospection et à la mise en valeur.
- IV Donner à un plus grand nombre de Canadiens la possibilité de participer aux activités de production et de mise en valeur.

Il est évident que ce sont les gouvernements qui profitent le plus de la mise en valeur de nouvelles mines. Tous ont donc avantage à collaborer pour découvrir plus de gisements de meilleure qualité.

INTRODUCTION

Pendant la période d'abondance, le gouvernement, les travailleurs et les cadres cherchaient à accaparer la plus grande part possible d'une économie en pleine expansion. Aujourd'hui, les temps sont durs, et les particuliers, ainsi que les petites et les grandes sociétés, l'ensemble de l'industrie, les provinces et mêmes les pays doivent lutter pour survivre, tant au point de vue commercial qu'économique.

La distinction entre les camps s'estompe donc de plus en plus, et beaucoup d'entre nous devons nous joindre à plus d'un camp pour survivre. Le gouvernement embauche des gens de l'industrie pour axer la gestion sur les coûts et la productivité, d'anciens fonctionnaires offrent leurs services d'experts-conseils à l'industrie et, dans tous les secteurs de l'économie, des spécialistes sont mis à pied ou doivent prendre des retraites

anticipées. Tous ces gens n'ont d'autre choix que de se lancer eux-mêmes en affaires. Ce sont les nouveaux entrepreneurs. Nous découvrons tout à coup que des industries entières pourraient être considérablement réduites ou même disparaître. "L'INDUSTRIE CANADIENNE DES MINÉRAUX PEUT SURVIVRE ET SURVIVRA."

Survivre signifie en fait faire des bénéfices, et ces bénéfices rapportent tant aux travailleurs qu'aux gouvernements et aux sociétés. Les bénéfices sont les recettes moins les coûts. Par conséquent, la seule façon d'obtenir ou d'accroître les bénéfices consiste à augmenter les recettes ou à réduire les coûts. Les réductions de coût les plus faciles à réaliser sont déjà opérées, mais il reste encore beaucoup à faire, et le processus sera long et ardu. Dans le secteur des minéraux, les recettes dépendent de la qualité du minerai et du prix des métaux. Comme nous savons déjà depuis longtemps que nous ne pouvons contrôler le prix des métaux, il est essentiel de découvrir des gîtes minéraux de meilleure qualité au Canada pour maintenir notre niveau de vie élevé.

APPORT DES PROSPECTEURS ET DES EXPLOITANTS À LA DÉCOUVERTE DES MINÉRAUX

Assez souvent, on tient pour acquis des faits qui ne correspondent pas à la réalité. Par exemple, on croit généralement que la prospection devient un outil d'exploration de moins en moins efficace, puisque les gisements les plus faciles à trouver ont déjà été découverts.

Pour bon nombre de gens, cela va de soi, mais s'est-on donné la peine de vérifier l'exactitude de cet énoncé dernièrement?

Leo Johannes Verleun, de l'Université Queen, a récemment terminé une étude très intéressante intitulée "Base Metal Supply Potential in Northern and Southern Canada". Cette étude présente une analyse financière de 271 gisements canadiens de minéraux et certaines autres données fort intéressantes.

Des 271 gisements étudiés, 55 avaient été découverts avant 1946. Comme on pouvait s'y attendre, 52 d'entre eux l'avaient été par prospection. Depuis 1946, quelque 216 gisements ont été découverts, dont 151 par prospection.

Pour chaque tranche de cinq années entre 1946 et 1977, il y a eu respectivement 12, 18, 10, 21, 19 et 19 découvertes, ce qui n'indique aucunement une diminution de l'efficacité de la prospection.

Évidemment, au cours de ces années, on a fait beaucoup de progrès en géologie, géophysique et géochimie. Il est toutefois étonnant de constater que la prospection a maintenu son rendement.

Il n'existe aucune donnée sur les frais d'exploration au Canada avant la Seconde Guerre mondiale, période où la presque totalité des découvertes résultaient de la prospection. Toutefois, la tendance observée depuis 1946 laisse croire que le coût moyen par découverte a augmenté considérablement, passant de 24,3 millions de dollars jusqu'en 1961 à 31,2 millions de dollars en 1969 et à 33,8 millions de dollars en 1977. Si, à partir de ces chiffres, on extrapole pour la période antérieure à 1946, on peut déduire qu'il en a coûté 20 millions de dollars ou moins (exprimés en dollars de 1983) pour découvrir l'un des 55 gisements datant d'avant la Seconde Guerre mondiale.

Ces données portent sur l'exploration des métaux communs, mais on ne voit pas pourquoi on n'accorderait pas autant d'attention et de fonds à l'accroissement du nombre de découvertes fructueuses de gisements aurifères au cours des années 80 et 90.

Cela est particulièrement important dans des domaines de recherche tels que la lithogéochimie où l'on a fait des pas de géants depuis la découverte des techniques d'analyse rapide. Ce n'est toutefois qu'un début; nous devons poursuivre nos efforts de recherche géoscientifique afin de trouver des techniques perfectionnées d'exploration de l'or comparables à celles dont nous disposons déjà pour l'exploration des métaux communs.

LE POURQUOI ET LE COMMENT DU SUCCÈS DE L'EXPLORATION DES MÉTAUX COMMUNS

Dans certaines parties du Canada, et particulièrement dans la publication gouvernementale intitulée "Le secteur canadien des minéraux et des métaux : cadre de discussion et de consultation", on a tendance à croire que le Canada est à l'origine des techniques perfectionnées que d'autres nations utilisent maintenant contre nous.

Avant d'ajouter foi à une telle affirmation, il faut examiner les faits.

On peut d'abord se reporter à une série de conférences données par M. Harold O. Seigel à l'ICMM au cours de 1982-1983. M. Seigel a souligné que, de 1948 à 1982, le Canada était le centre mondial de la recherche et du développement dans le domaine de la géophysique, ce qui lui a permis d'obtenir un succès phénoménal dans l'exploration des métaux communs.

Mais, tant le premier appareil aéroporté mis au point par Hans Lundberg en 1946, que le système McPhar datant de 1951, le système Hunting de 1953, les systèmes aëromagnétiques Newmont et Rio Tinto, de même que le système INPUT mis au point de 1955 à 1960, tous ont été financés par des capitaux étrangers et, pour la plupart, conçus par des étrangers.

Comment peut-on alors expliquer que tout cela se soit produit au Canada? Tout simplement parce que notre pays constituait un milieu propice, tant au point de vue fiscal, que politique et financier, pour ce genre d'entreprise.

Si le Canada retrouve cette attitude de pionner à l'égard des encouragements fiscaux, récompense les succès individuels, favorise les investissements étrangers et reconnaît les efforts de particuliers tels que les prospecteurs, il pourra répéter ses exploits des années 50 et 60, mais cette fois il s'agira des découvertes d'or dans les années 80 et 90.

Il ne fait aucun doute que la prospection est un moyen d'exploration minérale toujours aussi efficace! Il nous faut maintenant le leadership nécessaire pour donner au secteur des petites sociétés minières l'essor suffisant pour permettre au Canada de bénéficier des efforts des milliers de prospecteurs qui sont prêts à se mettre au travail.

La Prospectors and Developers Association estime que certaines de ces politiques pourraient servir d'exemple.

RECOMMANDATIONS DE NOUVELLES POLITIQUES

Des professionnels de tous les domaines qui ont été mis à pied ou qui ont anticipé leur retraite viennent grossir les rangs des prospecteurs. Ces nouveaux entrepreneurs proviennent du milieu du travail et des affaires, de même que de la Fonction publique. Ils ont tout un bagage de connaissances et d'expérience, de même que l'énergie et la volonté de prouver qu'ils peuvent réussir. Si nous leur donnons les moyens d'atteindre leurs objectifs, ils constitueront une grande force qui aura des répercussions dans l'ensemble du pays. Pour prospecter, découvrir et mettre en valeur les gisements de grande qualité dont le Canada a besoin, il faut orienter nos efforts vers quatre points principaux.

I FINANCEMENT DES DÉCOUVERTES

- a) Offrir un financement permanent par actions accréditives des frais d'exploration au Canada (FEC) par l'entremise de déductions sur les recettes non tirées des ressources et augmenter à 167 p. 100 la déduction pour épuisement visant les prospecteurs et explorateurs non productifs. Considérer comme un gain en capital le produit
- b) de la vente des propriétés minières des prospecteurs, de manière à tenir compte des risques élevés qu'ils prennent et de leurs conditions de travail difficiles.
- c) Prolonger la période d'engagement des ressources financières qui peuvent être considérées comme des FEC pour l'année d'imposition, de manière à inclure les deux premiers mois de l'année suivante.
- d) Rationaliser et simplifier les règles régissant le financement par actions accréditives, afin que les petites sociétés et les particuliers puissent plus facilement obtenir des capitaux de cette façon.

II ACCROÎTRE ET AMÉLIORER LA BASE DE DONNÉES

- a) Maintenir les ententes de développement économique et régional, en élargir la portée et en prolonger la durée, afin d'accroître nos connaissances géoscientifiques concernant la croûte terrestre au Canada. Les levés géologiques canadiens (fédéraux et provinciaux) sont les meilleurs au monde (et devraient continuer de l'être).

- b) Faciliter l'accès à la base de données grâce à l'informatique.

III ETENDRE ET AMÉLIORER LES ZONES DE PROSPECTION AU CANADA

- a) Adopter le concept d'utilisation multiple des terres dans les parcs provinciaux et fédéraux. Il a déjà été établi qu'il est parfaitement acceptable d'exploiter une mine dans un parc. Il ne faut plus prêter attention aux arguments alarmistes de certains extrémistes qui ne se soucient guère de la création d'emplois.
- b) Améliorer l'infrastructure afin de faciliter l'accès aux régions éloignées. Les routes sont les principaux moyens d'accès aux ressources minérales qui ne sont pas encore mises en valeur. Par le passé, les routes construites aux fins de l'exploitation des ressources ont rapidement été utilisées par les vacanciers.

IV DONNER À UN PLUS GRAND NOMBRE DE CANADIENS L'OCCASION DE PARTICIPER AUX ACTIVITÉS DE MISE EN VALEUR ET DE PRODUCTION

- a) Appliquer le principe du financement par actions accreditives aux frais d'aménagement au Canada (FAC) au moyen de déductions sur les recettes non tirées des ressources et d'un taux d'épuisement de 167 p. 100 accordé aux prospecteurs et exploitants non productifs. Il faut s'assurer que les Canadiens conservent le contrôle des nouvelles ressources découvertes.
- b) Permettre le financement après impôt des nouveaux avoirs miniers des prospecteurs et exploitants canadiens non productifs.

Nos études révèlent que, grâce à l'application combinée des points IV a) et b), les prospecteurs et exploitants non productifs obtiendraient un rendement de 20,7 p. 100, pourcentage comparable (20,2 p. 100) au rendement des sociétés canadiennes productrices dont le revenu est imposable. À la page suivante, vous pourrez constater comment ces recommandations pourraient améliorer les conditions économiques, à partir du modèle de mine d'or typique.

1.

SOCIÉTÉ PRODUCTRICE - REVENU IMPOSABLE

RENDEMENT DES INVESTISSEMENTS

20,2 %

Financement : 1/3 par actions / 2/3 par emprunt

RÉGIME FISCAL ACTUEL

2.

PETITE SOCIÉTÉ DE PROSPECTION ET DE MISE EN VALEUR NON
PRODUCTRICE

RENDEMENT DES INVESTISSEMENTS

6,6 %

Financement : 1/3 par actions / 2/3 par emprunt

RÉGIME FISCAL ACTUEL

3.

MODELE*

Réserve de minerai	- 2 412 000 tonnes
Teneur	- 0,16 oz d'or par tonne
Rendement du concentrateur	- 800 tonnes par jour
Taux de récupération	
au concentrateur	- 95 p. 100
Coût de la dette	- 12 p. 100 d'intérêt
Coût d'extraction	- 40 \$ la tonne
Prix de l'or	- 500 \$ oz

Coûts en capital :

**

Exploration/Mise en valeur	- 26 000 000 \$
Machinerie d'exploitation	
minière	- 18 000 000 \$
Concentrateur	- 9 500 000 \$

** Ne comprend pas les 6 millions de dollars de recettes de pré-production.

* Fondé sur les chiffres d'exploitation réelle d'une mine canadienne.

4.

ADMINISTRATIONS FÉDÉRALE/PROVINCIALE/MUNICIPALE

RENDEMENT DES INVESTISSEMENTS

51 %

Financement : par actions accréditatives, plus 2/3 de déduction pour épuisement sur les FEC et les FAC et financement après impôt des nouveaux avoirs miniers.

5.

RÈGLES FISCALES PROPOSÉES PAR la Prospectors & Developers Association

6.

PETITE SOCIÉTÉ DE PROSPECTION ET DE MISE EN VALEUR NON PRODUCTRICE

RENDEMENT DES INVESTISSEMENTS

20,7 %

Financement : par actions accréditatives, plus 2/3 de déduction pour épuisement sur les FEC et les FAC et financement après impôt des nouveaux avoirs miniers.

Soulignons que ce sont les gouvernements qui sont les grands gagnants dans la découverte d'une telle mine, puisqu'ils obtiennent un taux de rendement des investissements de 35 p. 100 sur les nouveaux revenus des particuliers, les bénéfices des sociétés et les impôts miniers. Notre résumé ci-annexé, intitulé "Supplément au mémoire de l'AMC sur le RENOUEAU ECONOMIQUE ET LE SECTEUR MINIER AU CANADA", indique un taux de rendement de 29 p. 100 lorsque le prix de l'or est fixé à 450 \$ l'once, ce qui explique le chiffre de 35 p. 100.

TOUTEFOIS, une nouvelle mine rapporte d'autres recettes au gouvernement sous forme de taxes, prélèvements et autres frais divers. Nous n'avons évidemment pas pu tenir compte de toutes ces taxes, mais si on ajoute l'impôt sur les capitaux, l'impôt foncier, les taxes scolaires, les taxes de ventes provinciales et fédérale et le produit de la vente de l'électricité, le rendement des investissements atteint 51 p. 100. Les calculs justificatifs sont annexés.

IL EST DONC CLAIR QUE L'EXPLOITATION DE NOUVELLES MINES
RAPPORTE A TOUS, ET TOUT PARTICULIEREMENT AU GOUVERNEMENT

BÉNÉFICES = RECETTES - COÛTS

IMPÔTS POUR LES
GOUVERNEMENTS ET
DIVIDENDES POUR
LES ACTIONNAIRES

= CHANGE POUR
LE CANADA

- SALAIRES POUR LES CANA-
DIENS + AFFAIRES POUR LES
FOURNISSEURS + IMPÔTS
SUPPLÉMENTAIRES POUR LE
GOUVERNEMENT

CONCLUSION

Depuis de nombreuses années, nous avons fait valoir notre point de vue auprès du gouvernement fédéral. Malgré les progrès, il reste beaucoup à faire. La Prospectors and Developers Association exhorte les gouvernements provinciaux à prendre au sérieux le thème de cette conférence et à appuyer ses recommandations, pour ainsi entrer dans "une nouvelle ère de collaboration".

Nous sommes prêts à rencontrer dès maintenant les représentants des gouvernements fédéral et provinciaux pour prendre les mesures qui s'imposent. Ensemble, nous pourrions découvrir, mettre en valeur et exploiter un plus grand nombre de mines de meilleure qualité. En misant sur des objectifs de rendement aussi élevé, nos gouvernements feront sûrement suffisamment confiance à la nation pour participer au financement de ses ressources minérales.

L.C. Kilburn
Le 29 juillet 1985

MODELE

TAXES DÉCOULANT DE L'EXPLOITATION D'UNE NOUVELLE MINE
(en milliers de dollars)

1. Année
2. Impôt sur le revenu reporté par transfert
(Note 1)
3. Impôt perçu sur la masse salariales
(Note 2)
4. Impôt sur le revenu et sur l'exploitation minière perçu de la société minière
5. Taxe sur le capital de la société
(Note 3)
6. Impôt foncier et taxes scolaires
(Note 4)
7. Taxes de vente fédérale et provinciale
8. Coût de l'électricité
(Note 5)
9. Net
10. Taux de rendement (note 6)
11. Notes
 1. Allègement fiscal pour l'investisseur à l'égard de la déduction des frais de mise en valeur transférés et engagés avant la mise en production, de même que l'épuisement gagné.
 2. Impôt sur le revenu des particuliers, RPC, PAC et paiements versés aux CAT, reliés aux travailleurs de la mine.
 3. La taxe sur le capital de la société peut augmenter dans les années ultérieures s'il n'y a pas versement de dividendes.
 4. Aucun changement dans l'évaluation ou le taux de rendement du concentrateur.
 5. Pas d'augmentation des tarifs d'électricité.
 6. Fondé sur un calcul en dollars constants, c'est-à-dire qu'il n'a pas d'augmentation en fonction de l'inflation. D'après le régime fiscal ontarien.

Le 25 juillet 1985
C MET-24

Supplément
au
mémoire de l'AMC sur
LE RENOUVEAU ÉCONOMIQUE ET
LE SECTEUR MINIER AU CANADA

L'honorable Robert Layton, C.P., député
Ministre d'Etat (Mines)
Chambre des communes
OTTAWA (Ontario)

Le 29 janvier 1985

Monsieur le Ministre,

La rencontre du 21 janvier, à Ottawa, entre vous, vos conseillers et les représentants de l'industrie minière s'est avérée des plus constructive. Notre rencontre ultérieure avec le ministre des Finances laisse également présager du succès de la consultation entreprise par le gouvernement. Nous vous remercions de nous avoir donné l'occasion de présenter notre point de vue.

Le présent document complète le mémoire intitulé "LE RENOUVEAU ECONOMIQUE ET LE SECTEUR MINIER AU CANADA", rédigé en grande partie par l'Association minière du Canada. L'Association nous a évidemment consultés lors de la préparation du mémoire sur l'industrie minière et, bien que nous souscrivions au point de vue présenté dans le rapport, nous estimons nécessaire, étant donné les caractéristiques particulières de notre secteur, de souligner certains aspects qui nous touchent particulièrement.

Pour démontrer comment la société peut tirer profit de la mise en valeur d'une nouvelle mine, nous avons joint au présent document une lettre de M. R. B. Parsons, de la firme Price Waterhouse, de même qu'un résumé d'une étude informatique réalisée à notre demande; la plupart des documents d'information avaient déjà été joints à notre lettre du 26 octobre. La pièce B indique toutes les recettes qui reviennent au gouvernement et qui dépassent les recettes reportées ou perdues. Le gouvernement a tout à gagner à adopter les mesures d'encouragement proposées.

Etant donné la fragilité de toute entreprise qui démarre, il faut lui réserver un traitement fiscal quelque peu différent dans l'application et la mise en oeuvre de mesures d'encouragement précises. Nous avons annexé à notre lettre du 26 octobre une modélisation informatique, effectuée par la maison Price Waterhouse, qui met l'accent sur la différence entre la valeur actuelle du taux de rendement interne des investissements des producteurs miniers qui réalisent des bénéfices par rapport à celui qu'obtiennent les petites sociétés non productrices. Des études récentes entreprises à EMR confirment les résultats de l'étude de la société Price Waterhouse. Les recommandations suivantes ont donc été formulées dans le but de régler ce problème.

Les modèles A1 et B1 de la pièce A de l'étude de Parsons font état du traitement inéquitable que subissent les petites sociétés minières; en vertu du régime fiscal actuel, le TRI d'une petite société minière est de 10,9 p. 100, alors que celui d'un

producteur qui réalise des bénéfices atteint 24,1 p. 100. Il s'agit donc de déterminer quelles mesures d'encouragement fiscal destinées aux petites sociétés permettraient de réduire cet écart et de rendre la production rentable pour la société qui fait la découverte.

Étant donné les répercussions favorables que la proposition aura sur les recettes gouvernementales et sur l'emploi, nous croyons que le ministre des Finances acceptera la solution proposée. Notre étude indique qu'il serait relativement simple de consacrer par voie législative et d'administrer le modèle J5 qui prévoit des encouragements quelque peu inférieurs au TIR que peuvent actuellement obtenir les grands producteurs qui réalisent des bénéfices. Pour atteindre cet objectif et rendre applicable le modèle J5, il faudrait apporter des changements fiscaux à plusieurs aspects du mode de financement. Tout d'abord, il faudrait rétablir le financement de la dette par obligations à intérêt conditionnel; pour éliminer les abus qui se sont produits par le passé, l'utilisation de ce mode de financement serait limitée aux éléments d'actif de la catégorie 28 (nouvelles mines). Il faudrait également apporter certains changements en ce qui a trait aux actions accréditives reliées aux frais d'exploration au Canada et aux frais d'aménagement au Canada; seuls les particuliers pourraient déduire les deux tiers, plutôt que le tiers comme c'est le cas actuellement, de l'épuisement gagné lié aux frais d'exploration et d'aménagement au Canada. Pour ce qui est des sociétés, le taux demeurerait au tiers.

D'après les précédents établis dans de récentes politiques fiscales, le modèle JK5 proposé semblerait excellent. En fait, les contribuables du Québec ont maintenant le droit de déduire les deux tiers. C'est ce qui explique que les activités d'exploration ont dépassé dans cette province celles de toutes les autres provinces réunies. Les risques coûteux que présentent l'exploration dans les roches dures justifient un tel encouragement.

Lors de nos discussions à Ottawa, nous vous avons mentionné que de nombreuses sociétés ont du mal à respecter les délais fixés pour la réalisation des travaux, en vertu des programmes de forage actuels. Dans un but d'efficacité, il est donc essentiel que les délais reliés aux travaux de forage imputés à l'exercice soient remplacés par un régime plus réaliste. À la demande de M. Glen Jenkins, sous-ministre adjoint des Finances, nous lui avons fait parvenir une lettre datée du 22 juin dans laquelle nous proposons des solutions à ce problème et à diverses autres difficultés. Vous trouverez ci-joint copie de cette lettre.

Le mémoire de l'AMC traite d'autres aspects du régime fiscal actuel qui doivent être modifiés. Tout en accordant une grande importance aux propositions présentées ici, qui concordent d'ailleurs parfaitement avec les recommandations de l'AMC, notre association souscrit pleinement à l'essentiel du mémoire de l'AMC.

Au cours des quinze dernières années, le régime fiscal n'a pas favorisé les prospecteurs, les petites sociétés minières ni les actionnaires qui appuient les activités d'exploration. Cette situation, entre autres, est sûrement à l'origine du ralentissement du rythme de découverte et de mise en valeur des nouvelles mines. Nous croyons que notre organisme peut contribuer considérablement au processus de consultation et nous vous appuierons pleinement dans vos efforts de formulation de politiques conçues pour relancer le secteur des minéraux. Nous voudrions vous rencontrer, dans les meilleurs délais, pour discuter de ce document.

Veuillez agréer, Monsieur le Ministre, l'expression de mes salutations respectueuses.

Le président,

H. Douglas Hume

C.C.

L'honorable Michael Wilson, ministre des Finances
M. William James, AMC
M. Bill Beard, EMR
M. Derek Williams, Finance
M. George Miller, AMC

Le 14 décembre 1984

PERSONNEL ET CONFIDENTIEL

Monsieur H. Douglas Hume
Président
Prospectors and Developers Association
74, rue Victoria, bureau 420
Toronto (Ontario)
M5C 2A5

Monsieur,

La présente lettre vise à résumer les divers points abordés ensemble au cours des dernières semaines concernant les avantages des nouvelles exploitations minières pour l'économie locale, régionale et nationale. Même si ces discussions sur les retombées économiques et les effets positifs des nouvelles exploitations minières sur les recettes fiscales nettes des gouvernements fédéral et provinciaux revêtaient un caractère plutôt préliminaire, d'après certaines études informatiques que vous nous avez demandé d'effectuer sur notre modèle de mine et ce que nous savons des autres études qui ont été réalisées, il semble que certaines modifications du régime fiscal, propres à favoriser la mise en valeur des nouvelles mines, pourraient influencer de façon très positive sur les recettes gouvernementales.

Comme vous le savez, le gouvernement fédéral hésite à prendre en considération certaines propositions de changement à la Loi de l'impôt sur le revenu à cause de l'ampleur du déficit. Nous avons pu constater que le gouvernement ne voit souvent dans les changements proposés qu'une perte évidente et immédiate de recettes fiscales et ne semble pas toujours tenir compte de leur effet positif sur l'ensemble de ces mêmes recettes.

Je crois donc que l'industrie minière devra démontrer au gouvernement que certaines propositions lui profiteraient, à long terme, si les changements proposés entraînent une augmentation nette du niveau d'activité économique au Canada. La pièce B énumère les diverses façons par lesquelles le gouvernement peut grossir ses recettes grâce à une augmentation nette de l'activité économique. Il ne fait aucun doute que, étant donné la faiblesse actuelle de l'économie sur les plans du chômage et de la sous-utilisation de la capacité de production, le gouvernement pourrait saisir cette occasion pour augmenter l'activité économique et les recettes fiscales en appliquant dès aujourd'hui au régime fiscal des modifications qui seraient axées sur les résultats.

À cet égard, vous m'aviez demandé d'étudier une série de projets de changements à apporter au régime fiscal, dont l'Association a discuté avec Énergie, Mines et Ressources. En vertu de cette proposition, les dépenses de mise en valeur antérieures à la production qu'une société minière transférerait à un investisseur donneraient à ce dernier le droit de déduire de son revenu un épuisement variant entre la moitié et les deux tiers des dépenses antérieures à la production.

Comme on peut le voir à la pièce A, une telle modification aiderait à éliminer partiellement cette injustice du régime fiscal selon laquelle un écart considérable peut exister entre le taux de rendement d'une société productrice et celui d'une petite société minière qui exploite le même gisement.

Le gouvernement n'a vu dans cette proposition qu'une érosion de ses recettes fiscales dès les premières années du projet, étant donné que l'investisseur pourrait se prévaloir de certains abris fiscaux. Cette façon de voir ne tient pas compte des recettes fiscales que réaliseraient les gouvernements pendant la durée de la nouvelle mine mise en valeur par la petite société minière : certaines de ces recettes sont énumérées à la pièce B.

Prenons le cas extrême où les seules taxes supplémentaires perçues par le gouvernement seraient prélevées sur la masse salariale à la charge de la société minière. La période de 18 mois antérieure à la mise en production permettrait de créer 336 années-personnes. Pendant les neuf années de production, selon ce modèle, 156 personnes travailleraient de façon permanente à la mine. Grâce à ces nouveaux emplois, les gouvernements fédéral et provincial pourraient percevoir les impôts sur le revenu des particuliers, des contributions au Régime de pensions du Canada, des primes d'assurance-chômage et des primes d'accident de travail, comme on peut le voir à la pièce C. Même dans ce cas extrême, le gouvernement obtiendrait un taux de rendement de 17 p. 100, si on compte les recettes fiscales futures par rapport aux pertes encourues les deux premières années. On peut facilement imaginer comment le taux de rendement du gouvernement augmenterait si on tenait compte des autres impôts énumérés à la pièce B. Par exemple, en comptant, en plus des impôts sur le revenu des particuliers mentionnés ci-dessus, l'impôt sur le revenu et l'impôt sur l'exploitation minière que la société minière doit verser au cours des neuf années d'exploitation, le taux de rendement du gouvernement atteindrait 29 p. 100. Il faut souligner que ce taux de rendement sera atteint même sans tenir compte des autres impôts non reliés aux revenus que la société minière doit verser, ni de l'effet multiplicateur selon lequel des sociétés et des particuliers, autres que les employés de la société minière et que cette dernière elle-même, paieraient des impôts supplémentaires.

Il serait relativement complexe d'effectuer une évaluation globale des avantages que retirerait le gouvernement à accepter les changements proposés ci-dessus. Toutefois, le gouvernement ne pourrait que sortir gagnant de l'application de ces changements.

On ne peut évidemment supposer que le gouvernement effectue, pour chaque proposition de changement, une analyse coût-avantages. En fait, l'expérience récente laisse croire que le gouvernement n'a pas tendance à effectuer ce genre d'analyse, se fiant parfois à des données empiriques et à d'autres points de repère souvent peu pertinents. J'estime qu'il incombe à l'industrie minière de prouver au gouvernement que certaines modifications proposées profiteraient à l'ensemble de l'économie, y compris au gouvernement.

J'aimerais également vous parler d'une autre question. Vous vous souviendrez sans doute que Bill Beard, d'Énergie, Mines et Ressources, avait suggéré d'utiliser notre modèle informatique sans tenir compte d'aucun impôt. J'ai donc répondu à sa demande : les résultats figurent à la pièce E.

N'hésitez pas à communiquer avec moi pour tout renseignement supplémentaire.

Je vous prie d'agréer, Monsieur, l'expression de mes meilleurs sentiments.

R. B. Parsons

p.j.

Pièce A

Prospectors and Developers Association

Modèle fiscal

Résumé comparatif des taux de rendement internes

		Or à <u>450\$</u>	Or à <u>500\$</u>
A1	Société minière n'ayant aucune autre activité. Règles fiscales actuelles.	6,6%	10,9%
B1	Société minière ayant d'autres activités imposables. Règles fiscales actuelles.	17,5%	24,1%
J4	Société minière n'ayant aucune autre activité. Les dépenses d'exploration et d'aménagement antérieures à la production sont transférées aux actionnaires par l'émission d'actions accréditives. <u>La totalité</u> de l'épuisement est déductible de toute source de revenu. Les particuliers qui qui achètent des actions accréditives ont droit à un épuisement gagné d'un demi plutôt que d'un tiers. Le taux d'épuisement demeure à un tiers pour la société. L'acquisition du matériel et de la machinerie est financée par l'émission d'obligations à intérêt conditionnel.	13,3%	18,3%
J5	Même chose qu'au point J4, sauf que les particuliers qui achètent des actions accréditives ont droit à un épuisement gagné de 2/3 plutôt que de 1/3. Le taux d'épuisement demeure à 1/3 pour la société minière.	15,4%	20,7%

Recettes gouvernementales tirées de l'exploitation
d'une nouvelle mine

Impôts directs

1. Impôt sur le revenu des particuliers (employés)
2. Contributions au Régime de pensions du Canada
3. Primes d'assurance-chômage
4. Primes du régime d'accidents de travail
5. Economie découlant du non-paiement de prestations d'assurance-chômage
6. Impôt sur le revenu de la société
7. Impôt sur l'exploitation minière
8. Impôt sur le capital de la société
9. Taxes municipales et scolaires
10. Taxes de vente provinciale et fédérale
11. Taxe sur le carburant et autres taxes énergétiques (y compris l'électricité)

Impôts à effet multiplicateur

Toutes les taxes mentionnées ci-dessus payées par les fournisseurs à l'entreprise minière et à ses employés, y compris :

- les experts-conseils et les entrepreneurs en forage
- les entrepreneurs en construction
- les fabricants du matériel et de la machinerie
- le transport ferroviaire et autres
- l'électricité
- le lotissement

Pièce C

Modèle de mine
Taxes découlant de l'exploitation d'une nouvelle mine
(en milliers de dollars)

Année	Impôt sur le revenu éliminé par transfert (Note 1)	Impôt perçu sur la masse salariale (Note 2)	Net
-------	--	---	-----

Total

Taux de rendement

Notes

1. Allègement fiscal accordé à l'investisseur sous forme de déduction des dépenses d'aménagement antérieures à la production qui ont été transférées, de même que l'épuisement gagné.
2. Impôt sur le revenu des particuliers, RPC, PAC et primes versées aux CAT et reliées aux travailleurs de la mine.

Modèle de mine
Taxes découlant de l'exploitation d'une nouvelle mine
(en milliers de dollars)

Année	Impôt sur le revenu éliminé par transfert (Note 1)	Impôt perçu sur la masse salariale (Note 2)	Impôt sur le revenu et sur l'exploita- tion minière perçue de la société minière	Net
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Total

Taux de rendement

Notes

1. Allégement fiscal accordé à l'investisseur sous forme de déduction des dépenses d'aménagement antérieures à la production qui ont été transférées, de même que l'épuisement gagné.
2. Impôt sur le revenu des particuliers, RPC, PAC et primes versées aux CAT et reliées aux travailleurs de la mine.

Prospectors and Developers Association
Modèles fiscaux
Résumé comparatif des taux de rendement internes

Impôt sur le
revenu et im-
pôt sur l'ex-
ploitation
minière

Aucun impôt
sur le revenu.
Impôt sur
l'exploitation
minière

Aucun impôt
sur le
revenu ni
sur
l'exploita-
tion minière

Mine unique financée
à 100 p. 100 par
actions

Or à 450 \$

Or à 500 \$

DOCUMENT: 860-158/006

42nd ANNUAL CONFERENCE OF PROVINCIAL
MINISTERS OF MINES

Brief

The Mining Association of Canada

Mining Association of Canada



CHARLOTTETOWN, P.E.I.
September 17, 1985



The Mining Association of Canada

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Presentation by William James, President
to the
Annual Conference of Provincial Ministers of Mines
Charlottetown, P. E. I., September 16, 1985

The Mining Association of Canada appreciates this opportunity to address the provincial Ministers of Mines. Over the years, your annual conferences have provided the occasion for many useful meetings between industry and government officials.

I am pleased to report that the goal of a vigorous and productive mining industry, which we all share, is closer to reality now than it has been for some years. Signs of a turnaround in the Canadian mining industry are very much in evidence. Profitability is being restored. The majority of mining companies are successfully competing in international mineral markets. Despite tough, aggressive marketing practices on the part of our most formidable competitors, Canadian companies are meeting prevailing commodity prices and re-establishing their market presence.

Recent Performance

The series of events that depressed the industry in recent years is well known and need not be elaborated here.

Despite the severe recession we experienced in the period 1981 to 1983, Canadian mineral production in 1984 increased to an estimated \$14.9 billion. In nominal terms this is a record high. In real terms it is very close to the peak production year of 1980.

During the recession, direct employment in the industry, which had stood at 138,000 in 1981, declined some 17 per cent to a low point of 115,000 by 1983 (excluding temporary layoffs). However, the estimated employment figure for our industry in 1984 was back up to 124,000. The public concern over mine closures has tended to obscure the fact that there have been growth nodes within the industry as well. Indeed there are now more mines in commission in Canada than there were in 1980.

The explanation for this improvement in performance is to be found largely in actions taken by individual companies. In order to compete successfully --indeed in order to survive--companies have had to significantly reduce operating costs and improve their productivity. In the last few years most companies have reduced their operating costs by as much as 30 or 40 per cent. This performance has enabled the industry to restore modest earnings at a time when prices of our major products are only about two-thirds of 1980 levels. Companies have succeeded in remaining competitive with producers in countries whose workers are paid only a fraction of Canadian mining company wage rates, which may be \$30,000 to \$40,000 a year or higher.

The mining industry's efforts to become lean and more competitive have enhanced its ability to take advantage of new opportunities for growth. The fundamentals of the Canadian mining industry are now very sound. We are potentially one of the nation's most competitive economic sectors and are in a good position to take advantage of any upswing in global economic activity.

However, the situation is still risky. Not all the problems which are adversely affecting performance have disappeared or been conquered. While mineral demand related to consumer goods has picked up, capital investment has lagged. Therefore, for most metals overcapacity persists and price recovery is faltering. Further cost

reduction on the part of companies is increasingly dependent on technology and new investment. The industry itself is not in a strong financial position. The gains that have been achieved over the last few years have to be consolidated.

We have an immediate challenge of remaining competitive. We also have a more enduring challenge of adapting to structural changes within the international economy. The emphasis on productivity improvement and cost reduction as the basis for competitiveness will become a continuing way of life for Canada's mining companies. In the longer term the industry must also adjust to emerging patterns in supply and in the end-use of minerals. In sum, the industry must become more market-responsive.

Industry is more than ever prepared to tackle these challenges. We think there are important actions that governments can take to complement our efforts. A cooperative national approach can help to ensure that jobs and enhanced economic benefits flow to Canada from a strong and growing mineral sector. We have seen growing signs of cooperation between the major actors in our Canadian economy. A sense of national purpose is being rebuilt, and we applaud your efforts in this regard.

Building Competitive Strength

Canada's resource industries remain extremely vulnerable to changes in the international economy. Several years of sustained vigorous growth in global minerals demand are necessary to re-establish the financial strength our industry needs to face another period of economic downturn. The first task for government is to sustain economic growth while dealing with the twin problems of international debt and public debt in Canada.

This is a difficult balancing act. As governments manage this transition, we believe it is very important to moderate any impacts on the operating costs of industries that must compete internationally.

Our industry has in the past made detailed representations on the issue of government-mandated costs, and we remain ready to discuss it further at your convenience.¹ We are encouraged by signs that both federal and provincial governments are sensitive to this matter. We urge Ministers to continue their efforts by restraining spending and by carefully designing any new revenue measures to avoid increasing industry operating costs.

Mechanisms are needed to facilitate cooperative work on these and other tax and economic issues with industry and among provincial and federal mines departments. In this respect we suggest that Ministers consider reconstituting the tax committee of officials that formerly met in conjunction with the Mines Ministers' Conference.

There are other areas where federal/provincial and inter-provincial harmonization appears desirable. For example, the federal government's budget paper on tax reform proposes possible radical changes to the tax treatment of corporations, including those in the mining industry. We would appreciate an opportunity to work with you to evaluate the implications of such reform for corporate and provincial mining tax regimes.

1. See, for example, the following Mining Association of Canada documents:

"Challenges and Opportunities", submission to the Royal Commission on the Economic Union and Development Prospects for Canada, December 1983.

"The Minerals Industry and Canadian Economic Growth", submission to the 41st Annual Conference of Provincial and Territorial Ministers of Mines and Resources, Yellowknife, August 8, 1984.

"Economic Renewal and Canadian Mining", submission to the Government of Canada, January 1985.

MAC believes that a set of policies that will lead to the lowest practical real interest rates is the most powerful economic development and job creation tool available to the federal government. Given the manner in which present high interest rates and the strong Canadian dollar hamper the performance of Canada's export industries, we suggest that this may be a subject appropriate for discussion at this Conference.

Longer Term Adjustments

There are five basic keys to ensuring the long-term competitive strength of Canada's mining industry--maintenance of the known resource base, maintaining technological leadership, the introduction of flexible human resource and training policies, improvements in the international trading environment, and more market-driven corporate strategies.

Space does not permit a detailed discussion of these matters. In summary, however, we believe there are distinct roles for the industry and for both levels of government in improving our performance in these key areas.

Maintenance of the known Canadian **mineral resource base** is needed to assure a steady stream of viable new mineral developments. We need long-term security of supply from Canadian sources in order to maintain continuing investment and state-of-the-art technology in Canada. In the last several years, a high level of exploration effort has been sustained. For example, in 1984 some \$420 million were spent on mineral exploration, a figure that substantially exceeds total mining industry profits (estimated at \$340 million) and is many times the dividends (estimated at \$250 million) paid to shareholders.

In part this exploration vigour is due to the extraordinary success of decisions taken in 1983 to enable companies to "flow through" the beneficial tax treatment accorded exploration costs against the non-resource income of investors. However, continued emphasis on exploration is required to realize the industry's potential contribution to the economy.

MAC has recommended streamlining existing flow-through provisions for exploration costs and extending these provisions to depletion allowances on pre-production development costs. These measures could help accelerate the pace of new mine investment in Canada and make it easier for the industry to sustain exploration and development expenditures during economic down cycles. This item could be an appropriate subject for inclusion on the agenda of the tax committee proposed in the previous section.

Despite its weak financial position, the industry is doing its utmost to maintain its position of **technological leadership**. The establishment last year by Noranda, Inco, Falconbridge and Kidd Creek of the Hard Rock Mining Company (HDRK) to conduct long-term cooperative research on production technologies, as well as of Inco's new advanced mining equipment company "Continuous Mining Systems Corporation", provide examples of the industry's commitment to this objective. Moreover, MAC is cooperating with the Canadian Advanced Technology Association to help strengthen the ability of Canada's high-tech manufacturing and service companies to meet the mining industry's emerging technology needs.

Governments will need to sustain adequate financial incentives for industry to invest in R and D and productivity enhancement. MAC appreciates the commitment of both levels of government to this objective as well as their efforts to ensure that government R and D is closely linked to industry needs.

The mining industry will continue to face **human and community adjustments** as a result of cyclical swings, mine exhaustion, and technological advance.

To help cushion the impact of these adjustments on workers and communities, MAC has urged the modification of existing social security nets to improve labour mobility and flexibility. In particular, MAC has supported government efforts to improve job information, place more emphasis on training programs, and introduce a variety of community-based initiatives and a youth employment scheme.

In the area of **international trade and investment**, the industry is worried about continuing protectionist sentiment in the United States which is the largest market for Canadian mineral exports. Potential mineral export opportunities are also being created by economic growth in China and the more rapidly growing countries of the Third World. Yet many of these same countries are progressively raising artificial trade barriers that limit Canadian mineral export opportunities.

For these reasons, MAC supports efforts to negotiate freer bilateral trade with the United States as well as improved multilateral trade arrangements through GATT.

Industry strategies must adjust over time to changing patterns of minerals production and use that in turn result from social and technological change. Until the end of the 1960s, the Canadian industry could virtually sell any mineral commodities it produced. However, mineral markets are now more complicated, as supply is increasingly affected by production decisions taken on non-market grounds. Patterns of demand are changing in response to new engineering specifications, commodity standards and the emergence of new materials uses. As well, there is a growing requirement to tailor products to individual customer needs.

The industry is responding to these changes primarily at the company level. However, the long-standing success of the International Lead and Zinc Study Group, as well as the establishment last year of the Nickel Development Institute is indicative of the willingness of the industry to enter into cooperative arrangements.

MAC believes that government can assist in this area of adjustment by strengthening its commercial intelligence-gathering capabilities and by supporting industry calls for the establishment of industry-based, cooperative international commodity research agencies as well as intergovernmental market study groups.

Conclusions

Increasingly, governments and industry share the same perception of the challenges facing the Canadian economy. MAC believes that in general Canada is moving in the right directions to re-establish competitive strength and to build economic prosperity.

We also believe that our industry has demonstrated its adaptability and its potential to contribute strongly to Canada's economy in the future. We can achieve that potential through a continuation of strong management, superior corporate strategies, rebuilding financial strength, technological leadership and incisive marketing.

Appropriate actions and policies of governments are also called for. We encourage government to judge all policy proposals by the standards of competitiveness, economic flexibility and the promotion of healthy adjustment.

The business climate in Canada is good and is improving. We can work together to realize the potential contribution of Canada's resources to all Canadians.

Traduction du Secrétariat

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42^e CONFÉRENCE ANNUELLE DES MINISTRES
PROVINCIAUX DES MINES

Mémoire

L'Association minière du Canada

Association minière du Canada



CHARLOTTETOWN (I-du-P.-É)

Le 17 septembre 1985

L'ASSOCIATION MINIÈRE DU CANADA

Allocution de William James, président,
à la Conférence annuelle des ministres provinciaux des Mines
Charlottetown (I.-P.-E.), le 16 septembre 1985

L'Association minière du Canada est heureuse de l'occasion qui lui est donnée de s'adresser aux ministres provinciaux des Mines. Depuis des années, vos conférences annuelles ont donné lieu à de nombreuses rencontres utiles entre des représentants de l'industrie et des gouvernements.

Je suis ravi de constater que nous sommes aujourd'hui plus près que nous ne l'avons été depuis un certain nombre d'années de l'objectif, que nous partageons tous, d'une industrie minière vigoureuse et productive. Les signes que l'industrie minière canadienne se trouve à un tournant ne trompent pas. La rentabilité est de retour. La majorité des sociétés minières soutient avec succès la concurrence sur les marchés miniers internationaux. En dépit de méthodes de commercialisation impitoyables et agressives de la part de nos plus dangereux concurrents, les sociétés canadiennes réussissent à s'accomoder des prix en vigueur des produits et elles reviennent en force sur le marché.

La performance récente

La série d'événements qui a entraîné le marasme dans notre industrie au cours des dernières années est bien connue et il est inutile de s'y attarder.

Malgré la grave récession que nous avons subie de 1981 à 1983, la production minière canadienne a atteint quelque 14,9 milliards de dollars en 1984. En termes absolus, il s'agit d'un record et, en termes réels, nous sommes très près du sommet de 1980 pour la production.

Au cours de la récession, les emplois liés directement à l'industrie, dont le nombre s'établissait à 138 000 en 1981, ont diminué de 17 p. 100 à 115 000 en 1983 (exclusion faite des mises à pied temporaires). Toutefois, le nombre d'emplois approximatif dans notre industrie est remonté à 124 000 en 1984. L'inquiétude du public à l'égard des fermetures a masqué le fait qu'il y a quand même eu des foyers de croissance dans l'industrie. En fait, il y a maintenant plus de mines en état d'exploitation au Canada qu'il y en avaient en 1980.

Les mesures prises par les diverses sociétés expliquent en grande partie cette amélioration de la performance. Pour soutenir la concurrence, ou même pour survivre, il a fallu que les sociétés réduisent sensiblement leurs frais de fonctionnement et améliorent leur productivité. Au cours des dernières années, la plupart d'entre elles ont sabré dans leurs frais d'exploitation dans une proportion de 30 à 40 p. 100. C'est ce qui a permis à l'industrie de réaliser des gains modestes alors que les

prix de nos principaux produits ne sont encore qu'aux deux tiers de ce qu'ils étaient en 1980. Les sociétés ont réussi à demeurer concurrentielles avec des producteurs de pays dont les travailleurs ne touchent qu'une fraction du salaire versé par les sociétés minières canadiennes à leurs travailleurs, salaire qui peut se situer entre 30 000 et 40 000 dollars et même plus.

Les efforts de l'industrie minière visant à réduire les dépenses et à devenir plus concurrentielle ont amélioré sa capacité de saisir les nouvelles possibilités de croissance. Les bases de l'industrie minière canadienne sont maintenant très solides. Nous pouvons devenir un des secteurs économiques les plus concurrentiels de ce pays et nous sommes en bonne position pour profiter de toute relance de l'activité économique globale.

Toutefois, cette situation comporte encore certains risques. Nous n'avons pas encore réussi à faire disparaître ou à vaincre tous les problèmes qui ont des incidences néfastes sur la performance. La demande de produits miniers reliée aux biens de consommation a repris, mais les capitaux d'investissement restent insuffisants. C'est pourquoi, on constate encore dans la plupart des secteurs de production de métaux une capacité de production excédentaire et un redressement de prix vacillant. Toute autre réduction des coûts par les sociétés dépendra de plus en plus de la technologie et des nouveaux investissements. L'industrie proprement dite se trouve dans une situation financière peu reluisante. Les gains réalisés au cours des dernières années doivent être étayés.

Le défi que nous devons relever dans l'immédiat consiste à demeurer concurrentiels, mais l'adaptation aux changements structurels de l'économie internationale constitue un défi plus persistant. Les sociétés minières canadienne devront prendre pour acquise la nécessité de mettre l'accent sur l'amélioration de la productivité et sur la réduction des coûts pour garder leur compétitivité. À plus long terme, l'industrie doit également tenir compte des nouvelles orientations en matière d'offre et de l'utilisation finale qui est faite des produits miniers. Bref, l'industrie doit mieux répondre aux besoins du marché.

Elle est mieux préparée que jamais à relever ces défis. Nous croyons que les gouvernements peuvent prendre des mesures importantes pour compléter nos efforts. Une collaboration nationale pourrait faire profiter le Canada des emplois et des retombées économiques accrues qui découlent d'un secteur minier fort et en pleine croissance. Nous constatons une volonté accrue de collaboration entre les principaux intervenants dans l'économie canadienne. La fierté nationale est en pleine reconstruction et nous vous félicitons pour vos efforts en ce sens.

L'exploitation des points forts en matière de concurrence

Les industries canadiennes de ressources demeurent extrêmement vulnérables à l'évolution de l'économie internationale. Plusieurs années d'une croissance vigoureuse et soutenue de la demande dans l'ensemble des marchés miniers sont indispensables afin de redonner à notre industrie la force financière requise pour faire face à la prochaine période de marasme économique. La première tâche du gouvernement doit être de favoriser l'essor économique tout en s'attaquant aux deux problèmes connexes de la dette internationale et de la dette publique du Canada.

Il est difficile d'établir un équilibre. À notre avis, il importe que les gouvernements prennent ce virage en atténuant les incidences sur les frais de fonctionnement des industries qui font concurrence à l'échelle internationale.

Notre industrie a par le passé présenté des mémoires complets sur la question des frais qui nous sont imposés par les gouvernements et nous sommes toujours prêts à en discuter lorsque bon vous semblera.¹ Nous sommes encouragés par les indices qui révèlent que les gouvernements fédéral et provinciaux sont sensibles à cette question. Nous incitons les ministres à persévérer dans la voie du contrôle des dépenses et à concevoir toute nouvelle mesure destinée à produire des recettes de manière à éviter d'accroître les frais de fonctionnement de l'industrie.

Il faudrait établir des mécanismes qui faciliteraient la collaboration entre l'industrie et les ministères provinciaux et fédéraux des Mines sur ces questions et d'autres aspects touchant les taxes et l'économie. À cette fin, nous proposons que les ministres rétablissent le comité de fonctionnaires sur les taxes qui se réunissait jadis dans le cadre de la conférence des ministres des Mines.

1. Voir, par exemple les documents suivants de l'Association minière du Canada :

"Challenges and Opportunities", mémoire présenté à la Commission royale sur l'union économique et les perspectives de développement du Canada, décembre 1983.

"The Minerals Industry and Canadian Economic Growth", mémoire présenté à la 41e Conférence annuelle des ministres provinciaux et territoriaux des Mines et des Ressources, Yellowknife, le 8 août 1984.

"Economic Renewal and Canadian Mining", mémoire présenté au gouvernement du Canada, janvier 1985.

L'harmonie fédérale-provinciale et interprovinciale semble également souhaitable dans d'autres secteurs. Par exemple, le document budgétaire du gouvernement sur la réforme fiscale propose des modifications radicales au traitement fiscal réservé aux sociétés, y compris à celles du secteur minier. Nous serions heureux de pouvoir travailler avec vous pour évaluer les incidences de pareilles réformes sur les régimes d'impôt minier des sociétés et des provinces.

L'AMC estime qu'une série de politiques qui donnerait les taux d'intérêt les plus bas, compte tenu des circonstances, constituerait l'instrument de développement économique et de création d'emplois le plus puissant dont pourrait se servir le gouvernement fédéral. Les taux d'intérêt élevés actuels et la force du dollar canadien étant des entraves à la performance des industries d'exportation canadiennes, nous proposons que ces questions fassent l'objet d'une discussion à la présente conférence.

Les ajustements à long terme

Il y a quatre éléments fondamentaux pour assurer la compétitivité à long terme de l'industrie minière canadienne. Il s'agit de conserver la réserve de ressources connue, de demeurer à la pointe de la technologie, d'adopter des politiques favorisant la souplesse des ressources humaines et la formation, d'améliorer les conditions commerciales à l'échelle internationale et d'axer davantage les stratégies des sociétés en fonction du marché.

Faute de temps, nous ne pouvons approfondir tous ces aspects. En résumé, nous croyons toutefois que tant l'industrie que chaque palier du gouvernement ont un rôle distinct à jouer pour améliorer notre situation sur ces plans capitaux.

Le maintien de la réserve de ressources minières canadienne est requise pour assurer une mise en chantier constante de nouvelles exploitations minières viables. La sécurité à long terme de l'approvisionnement de sources canadiennes est indispensable pour continuer à attirer les investissements et demeurer à la pointe de la technologie au Canada. Depuis plusieurs années, on encourage un vaste effort d'exploration. Par exemple, en 1984, on a consacré quelque 420 millions de dollars à l'exploration minière. Ce chiffre est largement supérieur aux profits totaux de l'industrie minière (évalués à 340 millions de dollars) et encore beaucoup plus élevé que les dividendes versés aux actionnaires (qui ont été évalués à 250 millions de dollars).

La vigueur du secteur de l'exploration s'explique par les décisions extrêmement heureuses prises en 1983 d'autoriser les sociétés à transférer le traitement fiscal privilégié accordé pour les frais d'exploration aux autres revenus des investisseurs qui ne proviennent pas des ressources. Toutefois, il faudra continuer à mettre en valeur l'exploration pour que l'industrie ait les retombées attendues sur l'économie.

L'AMC a recommandé d'assouplir les dispositions de transfert actuelles au titre des frais d'exploration et de les étendre aux provisions pour épuisement à l'égard des frais d'exploitation antérieurs à la production. De telles mesures contribueraient à accélérer le rythme d'investissement dans les nouvelles mines au Canada et permettraient à l'industrie de plus facilement absorber les frais d'exploration et de développement au cours de périodes de ralentissement économique. Il pourrait être utile d'inscrire cette question à l'ordre du jour du comité des taxes qui a déjà été suggéré.

Malgré sa faiblesse financière, l'industrie fait tout en son pouvoir pour garder son avance technologique. Des preuves de l'engagement en ce sens sont l'établissement, l'an dernier, par Noranda, Inco, Falconbridge et Kidd Creek de la Hard Rock Mining Company (HDRK) chargée d'effectuer une recherche coopérative à long terme sur les techniques de production ainsi que la nouvelle société de matériel minier perfectionné de l'Inco baptisée "Continuous Mining Systems Corporation". De plus, l'AMC et la Canadian Advanced Technology Association travaillent ensemble pour faire en sorte que les sociétés canadiennes de services de haute technologie et de fabrication de produits de haute technologie soient plus en mesure de répondre aux besoins technologiques naissants de l'industrie minière.

Les gouvernements devront continuer d'offrir des stimulants fiscaux adéquats pour inciter l'industrie à investir dans la recherche et le développement ainsi que dans les techniques d'amélioration de la productivité. L'AMC se réjouit de l'engagement des deux ordres de gouvernement en ce sens et des efforts qu'ils déploient pour que leurs travaux de recherche et de développement soient étroitement liés aux besoins de l'industrie.

En raison des différents cycles, de l'épuisement des mines et des besoins technologiques, l'industrie minière continuera de se heurter à des problèmes d'ajustement des personnes et des collectivités.

Afin d'atténuer l'incidence de ces ajustements sur les travailleurs et les collectivités, l'AMC est favorable à une modification des filets de sécurité sociale actuels de manière à améliorer la mobilité et la souplesse de la main-d'oeuvre. L'AMC a surtout appuyé les efforts des gouvernements visant à améliorer les renseignements sur les emplois, à faire une plus grande place aux programmes de formation et à lancer divers projets communautaires ainsi qu'un plan d'emploi pour les jeunes.

En ce qui a trait aux commerces et aux investissements internationaux, l'industrie s'inquiète du sentiment protectionniste persistant qui existe aux États-Unis puisque ce marché est le plus important pour les exportations minières canadiennes. La croissance économique de la Chine et l'essor plus rapide des pays du tiers monde offrent également d'autres possibilités de débouchés pour les exportations minières. Toutefois, bon nombre de ces pays imposent progressivement des barrières commerciales artificielles qui limitent les possibilités d'exportation de produits miniers canadiens.

Pour toutes ces raisons, l'AMC favorise des négociations en vue d'une plus grande libéralisation des échanges commerciaux bilatéraux avec les États-Unis et une amélioration des dispositions de commerce multilatéral par l'entremise du GATT.

Les stratégies industrielles doivent correspondre à la longue à l'évolution de la production minière et de son utilisation qui est elle-même le résultat de changements sociaux et technologiques. Jusqu'à la fin des années 60, l'industrie canadienne pouvait presque vendre tous les produits miniers qu'elle produisait. Toutefois, de nos jours, les marchés miniers sont

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42nd ANNUAL CONFERENCE OF PROVINCIAL
MINISTERS OF MINES

The Future of Mining Towns in Canada -
A Question of Priorities

Canadian Association of Threatened Single
Industry Towns



CHARLOTTETOWN, P.E.I.
September 17, 1985

BRIEFING PAPER
FOR
42ND PROVINCIAL MINES MINISTERS CONFERENCE
BY
CANADIAN ASSOCIATION OF THREATENED SINGLE INDUSTRY TOWNS

C O N T E N T S

	<u>PAGE</u>
A. <u>INTRODUCTION</u>	1
B. <u>WHY DID WE FORM AN ASSOCIATION?</u>	3
1. The Idea	3
2. The Idea Grows	3
3. The Founding Conference	4
4. An Association is Born	4
C. <u>WHAT OUR ASSOCIATION IS ALL ABOUT</u>	4
1. Our Major Goals	4
2. Our Operating Principles	4
3. Ancillary Services Offered	5
D. <u>INADEQUACY OF GOVERNMENT PROGRAMS IN RESPONSE TO COMMUNITIES FACING THE CRISIS OF CLOSURE</u>	5
1. Remarks by the Honourable Flora MacDonald, Minister of Employment and Immigration	6
2. Major Problems	7
E. <u>A NEW APPROACH FOR THE FUTURE</u>	8
1. Contingency Plans for Closure	9
2. Long Term Community Development Plans	9
3. Comprehensive Regional Development Strategies	9
4. Simplify Access to Government Programs	9
5. Improve Crisis Response Mechanisms	10
F. <u>CONSIDERATIONS FOR FURTHER ACTION</u>	11
G. <u>A MESSAGE FOR ALL SINGLE INDUSTRY TOWNS</u>	15
H. <u>WHAT CAN MINES MINISTERS DO?</u>	17

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A. INTRODUCTION

Our fledgling Association welcomes the opportunity to be able to present this brief to the ministers responsible for mining in Canada. On behalf of my directors and our membership, I would like to express my sincere appreciation for the invitation to attend this conference which was extended by the Department of Energy and Forestry from the host province, Prince Edward Island.

Our Association is comprised of a large number of concerned citizens from all walks of life living in single industry towns and resource-based communities in Canada. In addition, we have the support of a number of national, provincial, industry, labour and community groups. This diversity is our Association's strength.

While we are here today to discuss the subject of mining communities, our Association has not limited its efforts to mining communities exclusively. Our mandate is to "Help provide a more secure future for people living in single industry towns and resource based communities in Canada." This includes all resource based industrial sectors: Forests, Fisheries, Petroleum, Agriculture, Utilities, Tourism, Fur, etc. It is, however, with some measure of pride that I say it was through the initiative of eight mining communities that we were able to form our Association. And possibly because Canadian mining towns are the most seriously threatened we have a very strong support for our Association from mining communities nation wide.

It is also noteworthy that most of the studies and government interest in single industry towns has been directed to mining communities in crisis. This is not to diminish the seriousness of the problems faced by communities who rely on, say, forestry or fishing for their survival; it is simply a fact.

The Government of Canada and each of the Provinces and Territories should feel proud of the fact that they assumed a leadership role in addressing the dilemma facing mining communities by commissioning the 1982 Federal/Provincial/Territorial Task Force Report on Mining Communities in Canada. Now, while my Association and I are less than enthusiastic about the speed at which those recommendations are being implemented, we also recognize that we are already part of the way there because we have identified some of the things we need to do to correct the situation. Further, these recommendations have application to single industry towns regardless of their resource base.

While handing out compliments, I would like to commend the Honourable Robert Layton, Minister of State - Mines, and the Honourable Wilson Parasiuk for undertaking the Task Force on Mining Communities this summer. We laud their efforts on behalf of mining communities in Canada, and my main reason for coming to P.E.I. is to hopefully play an important role in convincing all provinces to join with us in our fight to provide a more secure future for single industry towns in Canada.

Our Association thinks that the status quo is no longer acceptable. We have gotten into a rut by thinking that we can open and close towns at will. We are here today to challenge the misconception that single industry towns were born to die.

Our Association believes that we must re-think the way we are doing business in Canada. We must re-think the way we are developing our resources, and we must re-think the role that single industry towns could play in the future development of this nation.

We think we owe it to the taxpayers of Canada to protect the multi-billion dollar investment we have made in single industry towns.

We think we owe it to the people in urban Canada who depend on the resources we harvest for their jobs.

We think we owe it to the people who have made substantial personal investment in these towns and call these mining towns their homes.

We think we owe it to all our children.

We are not a high-powered organization with all the answers. We are just a bunch of people who got together because we think a lot of the things we are doing in Canada don't make a lot of sense. During our first year, we may have a lot more questions than answers, but we feel strongly that the people living in single industry towns and resource-based communities deserve to know the answers to these questions. We hope this brief will be the first of many and also be the first bond in the formation of the consultative partnership we propose with Government, Industry and Labour.

B. WHY DID WE FORM AN ASSOCIATION?

1. THE IDEA

Mr. Bob Axford, First Vice President of the Red Lake Chamber of Commerce, Red Lake, Ontario called Dennis Young, Economic Development Officer for the Town of Lynn Lake, Manitoba suggesting the two towns (both facing mine closure) could group together to help solve some of the problems being faced by both communities. Young expanded Axford's idea by recommending we group together all single industry towns in Canada whether they be mining, forestry, fishing, petroleum, agriculture, etc., etc. Axford agreed and plans were put into motion.

2. THE IDEA GROWS

In March 1985, representatives from 8 mining communities in Northern Manitoba and Northwestern Ontario got together in Winnipeg to see if we could reach some consensus about what to do about the boom and bust cycles in single industry towns and resource-based communities which seem to have become inevitable.

It was decided at this meeting that whether the community be a city the size of Flin Flon, Manitoba or a small town like Ear Falls, Ontario we can no longer rely on a single industry for our long term survival.

The original eight communities formed an organizing committee and began to organize a founding conference, inviting over 350 single industry towns or resource-based communities to Winnipeg for a one day conference on May 27, 1985.

The organizing committee agreed on a general objective:

"To help provide a more secure future for people living in single industry towns and resource-based communities in Canada."

3. THE FOUNDING CONFERENCE

Letters of support flowed in from across Canada and on May 27, 1985 at the Winnipeg Convention Centre sixty-two delegates from all across Canada met to share their problems, concerns and possible solutions to the dilemma faced by all resource-based communities when a major industry shuts down.

The consensus reached by a vast majority of the attending delegates was that "single industry towns were not born to die" and that we should form a national association to challenge that misconception head on.

During workshops in the afternoon of our founding conference we brainstormed ways of overcoming the stumbling blocks we all face and seized on the fundamental concept that we must "diversify to survive."

The feeling was that single industry towns in Canada are our frontier towns of the present, and instead of shutting them down they should be our beach-head or staging ground for the future development of Canada's northern and remote regions.

4. AN ASSOCIATION IS BORN

At about 3:30 p.m. on May 27, 1985 a motion from the floor by Councillor Len Leyte of Labrador City, seconded by Mr. Bill Symms of the Federation of Northern Ontario Municipalities was discussed and voted on (thirty-one in favour and two opposed) and a new national association was born. Immediately following, a President and ten Directors were elected.

The new executive met and decided that for the first year a flexible, consensus-oriented management style be adopted giving the President the authority necessary to guide the Association through its first year of organization and operation.

The Executive felt our Association should continue to promote the grass roots, common sense approach which led to the groundswell of support from resource-based communities across Canada. It is our own initiative which will secure the future of our home towns.

C. WHAT OUR ASSOCIATION IS ABOUT

1. MAJOR GOALS

- (a) To help provide a more secure future for people living in single industry towns and resource-based communities in Canada.
- (b) To speak with a unified voice for the common good of all people living in single industry towns and resource-based communities in Canada.
- (c) To create a public awareness in Canada of the importance of the primary resource sector to our economic health and social well being and of the importance of the people and companies who develop and harvest these resources.
- (d) To promote a new era of resource development and to maximize the resource development potential in or near single industry towns and resource-based communities in Canada.
- (e) To share ideas and initiatives among our members and to support each other's priorities.
- (f) To encourage long term planning, economic development and industrial diversification of single industry towns and resource-based communities in Canada.
- (g) To assist communities and governments to develop and improve crisis response mechanisms for single industry towns and resource-based communities facing cutbacks and closure situations.
- (h) To help communities and governments assess and help resolve the many social dilemmas being faced by people living in single industry towns and resource-based communities in Canada.
- (i) To impress upon the people living in single industry towns and resource-based communities that they must rely on their own initiative, commitment and long term planning to save their towns, not governments.

2. OPERATING PRINCIPLES

- (a) We are a non-profit, grass roots organization, started by a group of concerned people just like you, open to all people concerned about issues affecting single industry towns and resource-based communities in Canada.
- (b) We wish to form a consultative partnership with all levels of government, industry, labour and community groups to cooperatively pursue our Association's goals.
- (c) We are non-sectarian and support no one political philosophy, party, or candidate.

2. OPERATING PRINCIPLES (continued)

- (d) It is our express desire to provide a balanced and reasonable approach to effectively address the concerns of all people living in single industry towns or resource-based communities in Canada, regardless of their association, affiliation, business, employment status, sex, age, race, national or ethnic origin, colour, religion, marital status, disability or beliefs.

3. ANCILLARY SERVICES OFFERED

- (a) Speakers Bureau on subjects related to single industry towns and resource development in Canada.
Rate: Negotiable per diem rate plus out of pocket expenses.
- (b) Research on economic and social issues affecting single industry towns and resource-based communities in Canada.
Rate: Contracts negotiated on an individual basis.
- (c) Independent community impact assessments completed for communities facing closure situations to accurately assess the full potential loss to your community and to quantify the magnitude of both the social and economic impact for the people in your home town.
Rate: Contract negotiated on an individual basis.
- (d) Independent diversification assessments of the potential for economic development and industrial diversification for your community.
Rate: Contracts negotiated on an individual basis.

D. INADEQUACY OF GOVERNMENT PROGRAMS IN RESPONSE TO COMMUNITIES FACING THE CRISIS OF CLOSURE

One component of the Canada/Manitoba Task Force on Mining Communities called for an "evaluation of existing programs to assist mining communities in distress." I have referred to it as the "Inadequacy of Government Programs" because my experience has been that the existing programs are inadequate when a community is facing the crisis of closure.

We have successfully developed programs to create a speedy exodus from those seriously threatened communities. However, we do not have programs which adequately address the developmental needs of these same communities--nor adequately address the needs of the people who wish to stay in their home town.

In Lynn Lake for example, our review demonstrated that out of 48 priorities and projects there were "no known programs" to address 37 (77%) of the priorities and projects. Civil servants are able to tell us why our priorities do not fit program criteria and are hamstrung by this same criteria even when they honestly try to address our priorities logically.

We must be more flexible and find ways of making the programs fit our priorities rather than our priorities fit the programs.

1. Remarks by Honourable Flora MacDonald, P.C., M.P., Minister of Employment and Immigration

In order to more clearly demonstrate this point and because I cannot say it any better, I would like to quote from some remarks made by the Honourable Flora MacDonald, P.C., M.P., Minister of Employment and Immigration, at the Canadian Steel Trade Conference at Sault Ste. Marie, Ontario on May 6, 1985.

- "...stability of our communities are not mere afterthoughts, they are the very prerequisites of growth."
- "We must preserve the value of the community."
- "I believe that they (our efforts) have fallen short of real success."
- "We waited for the crisis to occur then scrambled to find ways to mitigate the most dire consequences."
- "We often averted social collapse but we rarely promoted development."
- "Too often we arrived too late."
- "The direction of this government will be one of anticipation and development."
- "Our approach will be flexible."
- "We will train workers before the lay offs--before the plant shuts down."
- "The emphasis will be supporting entrepreneurship and encouraging development of viable small business."
- "Our approach will require us to explore innovative uses of the tax system to support economic renewal and adjustment."
- "I recognize that for some individuals mobility may be the inevitable last line of defence."

Miss MacDonald went on to explain the four main principles of the new Community Futures Program being developed by her department.

- (i) Develop an early warning system in order to be able to anticipate change not simply react to it.
- (ii) Flexibility to address the real needs of individual communities.

- (iii) Local Adjustment Committees will be established with greater access, in more communities, well before the layoff notices are posted and will take measures to diversify the local economy and thus create new opportunities and new jobs.
- (iv) We will combine our industrial development and labour adjustment initiatives into a single window approach.

Our Association agrees fully with every statement made by Miss MacDonald and commends her for her courage in tackling a task that we in single industry towns in Canada know to be essential elements to our long term survival. We offer our Association's full support and assistance to Miss MacDonald and her Department.

2. MAJOR PROBLEMS

As our first contribution to this joint effort, we would like to offer the following interpretation of what we see as the major problems.

- (a) PROBLEM: No contingency plan for the eventual closure of the mine by the Federal Government, Provincial Government or Local Government. All governments wait until the crisis become imminent before they react.
- (b) PROBLEM: No long term planning for the future development of mining communities.
- (c) PROBLEM. No economic development strategies for rural and remote regions of Canada
 - Resource Development
 - Infrastructure Requirements
 - Human Development
 - Community Development

Governments respond to current needs rather than working within a "master plan". Development programs are project-oriented and not approved in the context of a comprehensive development strategy. This problem is aggravated by lack of coordination and cooperation between departments and the different levels of government. All communities are planning their future development, but governments are not providing the leadership necessary to draw these community plans together into a realistic and comprehensive development strategy.

- (d) PROBLEM: Access to the wide range of government programs is too complex for rural and remote communities to take maximum advantage of.

In the Lynn Lake review, we tried to match our priorities with existing programs we knew about. We came up with a startling result.

Lynn Lake	Priorities/Projects - 48
	No Known Programs - 37 (77%)

We are sure that when this report is reviewed by federal and provincial governments there will be a number of programs identified that we did not know about. My question will no doubt be "Why didn't you tell us before? You had most of these priorities before you since October 16, 1984."

It is no good having a program if the communities don't know about it or the delivery system is so complex that even communities in crisis cannot access it or cannot access it in a timely manner.

- (e) PROBLEM: Slow response by governments to communities facing the crisis of closure.

Because there is no contingency plan for closure, no long term plan for community development, no development strategy for rural and remote regions of Canada, and because of the complexity of accessing government programs, all levels of government scramble to make the best of a bad situation when a mine closes. Usually this results in a high level of anxiety for people living in the community, frustration for community leaders who are trying to get things done, and negative public reaction to both provincial and federal governments.

E. A NEW APPROACH FOR THE FUTURE

In order to overcome these major problems or stumbling blocks, we must undertake a number of new initiatives. While we agree with the objective of the Community Futures Program and the principles as outlined by the Honourable Flora MacDonald, we also recognize the difficulty in making this dream become a reality. Our Association would like to offer our direct assistance in establishing the policies and procedures for this new program.

Our first step was to outline what we saw as the major problems. Our second is to put forward the following recommended solutions:

1. Contingency Plans for Closure

Years ahead of the event, prepare a contingency plan to address the potential closure of all mines. The plan should clearly outline the responsibility of all the major players:

- Federal Government
- Provincial Government
- Local Government
- Company
- Unions

2. Long Term Community Development Plans

Everyone who lives in the community deserves to know what the future of their town will be when the mine closes. There are really only two options:

- (i) Develop another economic base
- (ii) Close the town down

We must closely examine the full potential for development of other resource-based industries in the area of the mining community and determine what the best course for the future will be. If it is the development option, then we aggressively pursue this goal. If the closure of the town is unavoidable, then everyone knows this years ahead of the event and everyone (government included) plans his/her investment in the community accordingly.

3. Comprehensive Regional Development Strategies

Working cooperatively with all levels of government (federal, provincial, local) with input from private industry, labour and community groups, prepare comprehensive long term (10 year) development plans for rural and remote regions of Canada. Future budgetary commitments are then made with this "master plan" in mind. In good years, we progress quickly toward our ultimate development objectives; in bad, we don't progress as quickly, but everyone knows that our ultimate objective is to undertake the projects described in the plan. This long term planning approach encourages private investment and stability in all northern communities.

4. Simplify Access to Government Programs

Establish a "clearing house" with a toll free number where people can phone in with an idea or project and can be advised which programs could be used to help them. The "clearing house" could also respond to written enquiries.

If there are no known programs, the "clearing house" would recommend a course of action for the callers or writers to pursue. The "clearing house" could be the first stage of implementation of the "one window" approach being recommended for development initiatives.

The benefits of this approach are many but one of the main ones would be to reduce ministerial enquiries and enquiries to elected officials. The government could more efficiently control the enquiry before it was necessary to take it into the political arena.

The long term objective should be to develop programs to fit our priorities not to try and make our priorities fit the programs. Let's work together to find ways to make things work.

5. Improve Crisis Response Mechanisms

Until we can prepare contingency plans for closures, prepare long term plans for community development, prepare comprehensive regional development strategies and improve access to government programs, we will still have to respond to mine closures.

We must develop a better crisis response mechanism to deal with community distress caused by these closure situations. Our recommendations are as follow:

- (a) Clear commitments to the community's future must be made by all levels of government (Political Will).
- (b) Governments must not prematurely abandon all hope for future development in the community until all avenues have been exhausted.
- (c) Governments must have some mechanism in place to permit special budgetary considerations to quickly address the community's priorities.
 - Funding for studies
 - Funding for consultants
 - Funding for development projects and programs
 - Funding to maintain essential services
 - Funding for industrial incentives
 - Funding for risk capital for business development
 - Funding for adjustment programs
 - Funding for infrastructure requirements
- (d) Governments must become more flexible and develop a more "action oriented" approach to community crisis. All decisions should not have to be made by Cabinet and/or Treasury Board.

Government (Cabinet) should commit a certain amount of funding based on the severity of the crisis as determined by the community impact assessments. Decisions to spend that money should be decided on by a community-based "crisis management team" comprised of representatives from the Federal Government, Provincial Government, Local Government, Company, Labour and advocacy groups.

In this way, communities get to respond quickly and directly to the priorities they have identified. Everyone's interests are protected; however, the community has more control over its own destiny.

- (d) Governments must develop a capacity to respond to ideas put forward by communities and be able to commit specific people to research these ideas and recommend a course of action.

Right now the ideas put forward by the communities go nowhere until a proposal is drafted, and it is impossible for each community to write a proposal for each of the ideas; therefore, potentially good ideas go unresearched because of a lack of human resources.

Either the bureaucracy should be committed to this effort and be able to support their research of these ideas with documentation, or consultants should be hired to conduct this task.

For example, Lynn Lake has had a full-time Development Officer for one year, and the bureaucracy has had lists of development ideas from Lynn Lake for over 11 months, but only a small fraction of the ideas have been fully researched, and we have only been able to write proposals for a few key, top priorities. We must be able to develop a more responsive system.

F. CONSIDERATIONS FOR FURTHER ACTION

Before and during our founding conference, we asked all the delegates and all supporting communities and groups to identify the major stumbling blocks they were facing in their communities and to put forward their recommendations as to what needs to be done to overcome these stumbling blocks. Below is a compendium of the results.

Our Association is prepared to work long and hard with government, industry, labour and other advocacy groups to see that each of these points are seriously researched and to help formulate a plan of action for implementation or to get documented answers back to the communities as to why the suggested action cannot be undertaken.

1. Twenty-four percent (24%) of all federal M.P.s represent ridings which are predominantly dependent on single industry towns. Before dramatic change can be made in resource development in Canada, we must have a clear demonstration of political will to deal more effectively and fairly with people living in single industry towns in Canada. The status quo is unacceptable.

2. We must encourage the federal and provincial governments to develop programs to deal specifically with the problems being faced by all single industry, resource-based communities.
 - (a) Programs to deal with closure situations
 - Programs for people who want to stay
 - Programs for people who have to leave
 - (b) Programs to address the cyclical upturns and downturns in resource-based industries.
3. We must encourage the federal and provincial governments to fully implement the recommendations made by the 1982 Federal, Provincial, Territorial Task Force on Mining Communities and apply these recommendations to other single industry towns in Canada wherever possible.
4. We must encourage government to view non-renewable mineral development as a "one shot" opportunity to cover the costs of basic infrastructure such as roads, airports, schools, hospitals, etc. which leads to long term viability through intensive development and management of the renewable resource sector. (i.e. Forests, Fur, Fish, Tourism, Utilities)
5. Mining communities and single industry towns in Canada must be encouraged to diversify their industrial base by developing all resources in the region (i.e. Forests, Fur, Fish, Tourism, Agriculture, etc.)
6. We must process and manufacture more of our resources in the community or region where it is produced. Let's ship finished products out of the North rather than raw materials.
7. We must maximize our ability to become more self-sufficient by producing more of the essential goods we use in our communities and in the region.
8. We must encourage all companies to exhibit a high degree of corporate and social responsibility when dealing with people living in single industry towns by involving the community as a part of their decision-making process.
9. We must look at the way other countries develop resource-based industries and the communities which serve them. We can learn from other countries like Sweden, Finland, Australia and the Soviet Union.
10. We must encourage the government to identify single industry towns which face immediate crisis, that is to say, closure of their sole industry within the next five years.
11. We must develop contingency plans for closure situations years before the event. All closures are very similar, and we should have a model to follow rather than each community and each company having to re-invent the wheel each time it happens.

12. We must encourage the government to develop a better crisis response mechanism for single industry towns facing crisis situations. See Page

13. When facing a closure situation, we must encourage the government to do as much for the people who want to stay in the town as they do for the people who have to leave.

14. When the closure of a town cannot be avoided, we must encourage the government to provide a fair equity compensation package for property owners;

(a) by permitting property owners to deduct their property losses from future income, OR

(b) by direct compensation for the total loss in equity.

15. We must educate people living in urban centres as to the importance of the primary resource sector and stress the vital contribution it makes to our overall economic health and social well being.

As a first step, our Association would like to work with government to develop a sponsorship program for "graduate student" studies and research in the following key areas:

- primary resource development
- relationship of northern development to urban life
- rural and remote community development
- entrepreneurship in northern and remote regions
- the total cost of mine closure and community collapse
- the social and economic cost of the closure of Uranium City
- etc., etc.

16. We must encourage more decentralization of government services as a means of providing better service to the public and a means of stabilizing single industry towns in Canada.

17. We must develop suitable single industry towns into regional centres with a diversified economic base serving the needs of a number of communities in the area.

18. We must encourage the government to review their foreign investment practices which often see our government and our banks lending money to foreign countries to establish industries which compete directly with Canadian companies. We must help other countries but not at the expense of Canadian jobs which often results in the closure of another single industry town.

19. Investment Canada (FIRA) must be encouraged to direct foreign investors to a choice of certain regions or communities in Canada.

20. We must capitalize on an untapped wealth of entrepreneurial spirit in the North by improving our delivery mechanisms for available business training programs and advisory services.

21. We must conduct a diversification assessment for all single industry towns and resource-based communities in Canada.

22. Using the experience of other single industry towns that have successfully diversified, we must develop a "Success Model" for all communities to follow.

23. We must dramatically intensify our exploration efforts to find other ore bodies in the areas near threatened single industry towns in Canada.

24. We must encourage the government to implement a truly "single window approach" to economic development in Canada. Right now, development proposals have to be sent to many federal and provincial departments for consideration under a myriad of programs. It makes much more sense to have the proposal go to one agency that will sort through the complexity of programs identifying which ones will apply and developing special contingencies where no program exists.

25. We must encourage the creation of a National Reserve Fund, which is needed to address the problems of single industry and resource-based communities in Canada. This Fund could be similar to the Manitoba Mining Community Reserve Fund or be developed along a "shared risk concept" with contributions to the Fund being made proportionally by the federal government, provincial government, municipal governments, companies and employees.

26. We must also examine ways and means of establishing a community-based Diversification Fund. This type of fund would permit communities to direct funds to the priorities they feel are most important. The community has more control over its own destiny, and pressure on government to come up with all the answers is lessened.

27. We must stimulate northern and rural development by developing a regional tax system; possibly one similar to Australia, which has a graduated tax system with people in remote communities paying less tax than people in urban centres. Other tax initiatives should also be examined.

28. We must encourage government to permit companies in single industry towns to invest in community infrastructure with pre-tax dollars rather than after-tax dollars as is now the case.

29. We must develop industrial incentives to encourage industries to invest in rural, remote and northern Canada. A measure similar to the one implemented by the Honourable Sinclair Stevens in Cape Breton would definitely promote economic development. As a start, we suggest we test this option by limiting it to northern residents who wish to start a business in a rural or remote community.

30. The "Tier Level" system for DRIE grants is totally inequitable and should be restructured immediately so communities facing a closure situation could encourage industries to establish in their towns.

31. We must encourage the government to develop interconnecting, east-west transportation links in the North rather than rely on the traditional north-south routes (i.e. road, air and rail).
32. We must encourage the government to undertake a Resource Planning Survey, similar to the Mineral Planning Survey produced in the 1970's, which forecast mine closures and mine starts over a 20-year period. This long term planning approach for resource harvesting is essential for the country's survival let alone the survival of over 350 resource-based communities.
33. We must consider creating a fund similar to the Swedish Investment Fund, which permits companies to place up to 50% of their profits into a government-controlled investment fund during good times and receive a tax deduction. Then, during recessions or cyclical changes in the industry the fund is available for use by the company. Companies get a good tax break during boom times and have a ready supply of investment capital during hard times.
34. We must examine the degree of success experienced by the "community co-op" system implemented in Britain and the "industrial co-op" system in Spain.
35. We must examine the possibility of protecting the Canadian mining industry with tariffs and/or quotas, particularly where a community's survival is at stake.
36. Encourage the federal government and the provincial governments to develop a long term development strategy (20 years) for the primary resource sector in Canada with particular attention being paid to sectoral planning and regional development. Clearly stated government objectives and plans will encourage businesses to invest and will help stabilize the primary resource sector.

Certainly this list is not exhaustive and therefore we encourage everyone who reads this to add his or her ideas to the list and to send a copy to our Association. We will strive to see that these concepts are explored to the fullest extent possible.

G. A MESSAGE FOR ALL SINGLE INDUSTRY TOWNS

One of the most important goals of our Association is as follows:

"To impress upon people living in single industry towns and resource-based communities that they must rely on their own initiative, commitment and long term planning to save their towns, not governments."

There must be a "fire in the belly" of the people fighting for their home town, and there is no better time to start building that fire than right now. Your biggest mistake could be that you waited too long before getting started.

Many of the people living in single industry towns and resource-based communities have faced tough times, and many more will face tough times ahead. Many communities have also learned some hard lessons. The purpose of this section is to pass on some of those lessons to you.

LESSONS LEARNED THE HARD WAY

1. LEAD TIME
 - Start your diversification efforts now! It takes at least five years before you will start to see results.
2. BRAINSTORM
 - Get all the ideas flowing into a central point.
3. WORK TOGETHER
 - Work together with communities in your area. Develop a region, not just a community.
4. SET PRIORITIES
 - Let common sense prevail; go with your gut feeling. Is it right for your town? Do you have the resources in your town to support it?
5. USE EVERY ANGLE
 - Get your initiatives going into the system through every avenue you have. Make your priorities everyone else's.

M.P., M.P.P., M.L.A., M.H.A.,
MINISTERS, CIVIL SERVANTS,
FEDERAL AND PROVINCIAL ASSOCIATIONS
AND ORGANIZATIONS, UNIONS,
COMPANIES, MUNICIPALITIES, ETC.
6. NEVER LET UP
 - You must exert constant pressure to get action.
7. BE OPEN WITH THE MEDIA
 - Communicate openly with the people. Let everyone know your concerns and your success stories.
8. PUBLIC SUPPORT AND COMMITMENT
 - If you lose community support for your initiatives, you lose everything!

H. WHAT CAN MINES MINISTERS DO?

As Mines Ministers, some of you may be saying, "What has all this got to do with us?" Well, the fact is that we all have a great deal to lose by ignoring the issue of mining communities. We must all look at the cost of shutting a town down to be able to look realistically at the cost of the alternative--diversifying and saving the town. How many millions of dollars did it cost the taxpayers, the mining company, the service businesses and the people when we shut down Uranium City? What would have happened if we had directed some of those millions into development initiatives? What would have happened in Uranium City if we had all worked together to save Uranium City? What did it cost the people of Uranium City, not only financially but also in human terms? In this day and age, when we are plagued by calls for fiscal responsibility, does it make sense to walk away from a multi-million dollar investment like a community without giving it our best shot? What opportunities did we lose for the full development of all our resources in northern Saskatchewan by shutting that town down? What do we gain by shutting down our frontier towns? Might it not be better to use them as staging grounds for future development?

Uranium City is only one of many examples we could have used; Buchans, Newfoundland is another. My personal experience in Lynn Lake demonstrated to me that the government was quite prepared to throw up its hands and walk away from Lynn Lake too. Sure, we got a last-minute reprieve with the announcement by Sherritt Gordon Mines Limited that they were proceeding with the development of the Agassiz Gold property. Sure, we are pleased with the financial contributions made by both the federal and provincial governments to the Agassiz project, but I still have to ask, "What do we do five years from now when Agassiz, now called the MacLellan Mine, shuts down?"

I am convinced there are real opportunities to diversify Lynn Lake's economy, and this leads me to believe that many other mining communities also have a wealth of untapped resources. Our Association says it is time to take a serious look at the way we could maximize the development of all our resources and to closely examine how mining communities (single industry towns) could help spearhead these new development initiatives.

As Mines Ministers, you are in a unique position because you have an opportunity to start the ball rolling on a new era of resource development in Canada. Mining Communities, single industry towns and other resource-based communities are ready to support your initiatives in these areas. You have a 1982 Task Force Report,

a 1985 Task Force Report, and our recommendations which, in part, identify some dramatic and positive steps which could be taken towards this goal. Why not take the most important step? Why not decide today on which ones we are going to implement? Why not work out an implementation plan for the ones we are going to implement? Pick the easy ones, commission more in-depth studies, schedule interdepartmental and interprovincial meetings, or undertake any other action to see these task force recommendations implemented, but let's make a commitment today; let's get started today!

Hundreds of our members and hundreds of single industry towns in Canada are counting on your leadership to help provide us with a more secure future. We wish you well as you decide our fate.

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42^e CONFÉRENCE ANNUELLE DES MINISTRES
PROVINCIAUX DES MINES

L'avenir des villes minières au Canada
Une question de priorités

La Canadian Association of Threatened Single Industry Towns



CHARLOTTETOWN (I-du-P.-É)
Le 17 septembre 1985

DOCUMENT D'INFORMATION

POUR

LA 42e CONFERENCE ANNUELLE DES MINISTRES PROVINCIAUX DES MINES

SOUMIS PAR

LA CANADIAN ASSOCIATION OF THREATENED SINGLE INDUSTRY TOWNS

TABLE DES MATIERES

	<u>PAGE</u>
A. <u>INTRODUCTION</u>	1
B. <u>POURQUOI AVONS-NOUS CREE UNE ASSOCIATION?</u>	3
1. L'idée première	3
2. Eclosion de l'idée	3
3. La première conférence	4
La naissance d'une association	4
C. <u>EN QUOI CONSISTE NOTRE ASSOCIATION?</u>	5
1. Ses objectifs principaux	5
2. Sa structure	6
3. Les services connexes	6
D. <u>L'INNEFFICACITÉ DES PROGRAMMES GOUVERNEMENTAUX À L'ÉGARD DES COLLECTIVITÉS MENACÉES DE FERMETURE</u>	7
1. Commentaires de l'honorable Flora McDonald, C.P., député et ministre de l'Emploi et de l'Immigration	7
Les principaux problèmes	9
E. <u>UNE NOUVELLE APPROCHE POUR L'AVENIR</u>	10
1. Les plans de secours en cas de fermeture	11
Les plans de développement communautaires à long terme	11
3. Les stratégies globales de développement régional	11
4. L'accès simplifié aux programmes gouvernementaux	12
5. L'amélioration des mécanismes de secours en cas d'urgence	12
F. <u>QUELQUES IDÉES POUR LA MARCHE À SUIVRE ULTÉRIEUREMENT</u>	14
G. <u>UN MESSAGE À L'INTENTION DE TOUTES LES VILLES MONO-INDUSTRIELLES</u>	20
H. <u>QUE PEUVENT FAIRE LES MINISTRES RESPONSABLES DES MINES?</u>	22

42e CONFERENCE ANNUELLE DES MINISTRES PROVINCIAUX DES MINES

CANADIAN ASSOCIATION OF THREATENED SINGLE INDUSTRY TOWNS

A. INTRODUCTION

Notre jeune association est heureuse de pouvoir présenter ce document d'information aux ministres responsables des mines au Canada. Au nom des administrateurs et des membres, j'aimerais sincèrement remercier le ministère de l'Énergie et des Forêts de la province hôte, l'Île-du-Prince-Édouard, d'avoir invité notre organisme à cette conférence.

Notre association est formée d'un grand nombre de citoyens provenant de toutes les couches de la société, et qui vivent dans des villes mono-industrielles ou dans des collectivités tributaires de l'industrie primaire et qui se préoccupent de l'avenir de leurs villes. Nous comptons également sur le soutien d'un certain nombre de groupes nationaux, provinciaux, communautaires, patronaux et ouvriers. Cette diversité fait la force de notre association.

Bien que nous soyons ici aujourd'hui pour discuter du problème des collectivités minières, notre association ne borne pas ses efforts exclusivement à ces collectivités. Notre mandat consiste effectivement à tenter d'assurer un avenir plus sûr aux habitants des villes mono-industrielles et des collectivités dont l'industrie est axée sur les ressources, au Canada, celles-ci comprenant tous les secteurs : forêts, pêches, pétrole, agriculture, services publics, tourisme, fourrures, etc. Je dois toutefois avouer, avec une certaine fierté, que c'est grâce à l'initiative de huit collectivités minières que nous avons pu créer notre association. C'est sans doute parce que celles-ci sont les plus menacées que l'association bénéficie de leur très solide appui d'un bout à l'autre du pays.

Il convient également de noter que la plupart des études concernant les villes mono-industrielles et la plus grande partie de l'attention que le gouvernement porte à cette question sont axées sur les collectivités minières en péril. Je ne dis pas cela dans l'intention d'atténuer la gravité des problèmes auxquels doivent faire face les collectivités tributaires de la forêt, de la pêche ou d'autres ressources pour assurer leur survie, mais je constate tout simplement un fait.

Le gouvernement du Canada et celui des provinces et des territoires devraient être fiers d'avoir décidé de s'attaquer au dilemme des collectivités minières, en chargeant un groupe de travail fédéral-provincial-territorial de faire un rapport sur les communautés minières, en 1982. Bien que l'association et moi-même ne débordions pas d'enthousiasme face à la rapidité de mise en oeuvre des recommandations, nous reconnaissons qu'une

partie du chemin a été parcourue, puisque le groupe de travail a au moins défini quelques-unes des mesures correctives à prendre. En outre, les recommandations du rapport peuvent être appliquées à toutes les villes mono-industrielles, quelle que soit l'industrie dont elles sont tributaires.

J'aimerais en outre féliciter l'honorable Robert Layton, ministre d'Etat aux Mines, et l'honorable Wilson Parsiuk pour avoir mis sur pied le groupe de travail sur les communautés minières, cet été. Nous applaudissons leurs efforts au nom des collectivités minières du Canada. La raison principale de ma venue à l'I.-P.-E. pour cette conférence, c'est que j'espère y jouer un rôle important et réussir à convaincre toutes les provinces de se joindre à nous dans notre lutte pour assurer un avenir plus sûr aux villes mono-industrielles du Canada.

Notre association estime que le statu quo n'est plus acceptable. Nous avons, en effet, pris la mauvaise habitude de croire que nous pouvons créer et fermer des villes à volonté. Si nous sommes ici, aujourd'hui, c'est pour corriger cette idée erronée que les villes mono-industrielles sont appelées à disparaître tôt ou tard.

Notre association croit qu'il faut repenser la manière dont nous faisons des affaires au Canada. Nous devons repenser nos méthodes de mise en valeur des ressources, de même que le rôle que les villes mono-industrielles pourraient jouer dans le développement de la nation.

Nous pensons que nous avons une obligation envers les contribuables canadiens et que nous devons, par conséquent, protéger les milliards de dollars d'investissement que nous avons fait dans les villes mono-industrielles.

Nous pensons que nous avons une obligation envers les habitants des grandes villes canadiennes, dont les emplois dépendent des ressources que nous exploitons.

Nous pensons que nous avons une obligation envers ceux qui ont investi des sommes et des efforts importants dans ces villes minières qu'ils appellent leur chez-soi.

Enfin, nous pensons que nous avons une obligation envers tous nos enfants.

Nous ne prétendons pas être un organisme très puissant, qui peut répondre à toutes les questions. Nous ne sommes en fait qu'un petit nombre de personnes et nous nous sommes regroupés parce que nous sommes tous d'avis que ce qui se fait au Canada n'est pas toujours très sensé. D'ailleurs, durant la première année, nous aurons probablement beaucoup plus de questions que de réponses,

mais nous croyons vraiment que les habitants des villes mono-industrielles et des collectivités dont l'industrie est axée sur les ressources méritent de connaître les réponses à ces questions. Nous espérons que ce document d'information sera suivi de plusieurs autres et qu'il constituera le premier maillon de l'association consultative que nous proposons d'établir entre le gouvernement, l'industrie et les travailleurs.

B. POURQUOI AVONS-NOUS CRÉÉ UNE ASSOCIATION?

1. L'IDÉE PREMIÈRE

Un jour, M. Bob Axford, premier vice-président de la Chambre de commerce de Red Lake, dans la ville ontarienne du même nom, a appelé M. Dennis Young, agent de développement économique pour la ville de Lynn Lake (Manitoba), lui proposant de regrouper les deux villes (toutes deux menacées de la fermeture de leur mine) en vue d'aider à résoudre quelques-uns des problèmes auxquels faisaient face les deux collectivités. M. Young développa ensuite l'idée de M. Axford en recommandant le regroupement de toutes les villes mono-industrielles du Canada, quelle que soit leur industrie, c'est-à-dire les mines, les forêts, les pêches, le pétrole, l'agriculture, etc. M. Axford s'est dit d'accord et l'élaboration des plans a été amorcée.

2. L'ÉCLOSION DE L'IDÉE

En mars 1985, les représentants de huit collectivités minières du nord du Manitoba et du nord-ouest de l'Ontario se sont réunis à Winnipeg pour envisager la possibilité de trouver des solutions au problème, qui semble maintenant inévitable, de l'alternance des périodes de suractivité et de dépression économiques que connaissent les villes mono-industrielles et les collectivités dont l'industrie est axée sur les ressources.

Il a été constaté à cette réunion qu'aucune collectivité ne peut désormais plus compter sur une seule industrie pour assurer sa survie à long terme, que ce soit une ville de la taille de Flin Flon (Manitoba), par exemple, ou une petite ville comme Ear Falls (Ontario).

Les huit collectivités en question ont ensuite formé un comité organisateur et commencé à mettre sur pied la première conférence, invitant à Winnipeg plus de 350 villes mono-industrielles ou collectivités tributaires de l'industrie primaire à une conférence d'une journée, prévue pour le 27 mai 1985.

Le comité organisateur s'est mis d'accord sur l'objectif général suivant :

(traduction non officielle)

"Aider à assurer un avenir plus sûr aux habitants des villes mono-industrielles et des collectivités tributaires de l'industrie primaire au Canada."

3. LA PREMIERE CONFERENCE

Entre temps les lettres de Canadiens manifestant leur appui à cette conférence ne cessaient d'arriver. Le 27 mai 1985, au Centre des congrès de Winnipeg, 62 délégués venant de tous les coins du Canada se sont réunis pour partager leurs problèmes, leurs inquiétudes et les solutions qu'ils envisageaient pour sortir de leur dilemme toutes les collectivités vivant de l'industrie primaire, dont une industrie importante vient à fermer ses portes.

La grande majorité des délégués présents en ont conclu que "les villes mono-industrielles n'étaient pas appelées à disparaître tôt ou tard" et qu'il fallait créer une association nationale qui s'attaquerait de front à cette idée erronée.

Pendant les ateliers qui se sont tenus l'après-midi de notre première conférence, nous avons eu des séances de remue-méninges sur les façons possibles de franchir les obstacles auxquels nous faisons tous face, puis nous en avons retenu le principe fondamental que l'économie de nos collectivités doit se "diversifier pour survivre".

Les délégués ont estimé que les villes mono-industrielles du Canada sont l'équivalent contemporain de nos villes pionnières et que, au lieu de les fermer, il faudrait en faire des têtes de pont ou des tremplins pour le développement futur du nord du Canada et des régions éloignées.

4. LA NAISSANCE D'UNE ASSOCIATION

Vers 15 h 30 de l'après-midi du 27 mai 1985, M. Len Leyte, conseiller de Labrador City, a présenté une résolution, qui a été appuyée par M. Bill Symms de la Fédération des municipalités du nord de l'Ontario. Après en avoir discuté et avoir procédé au vote (trente et un pour et deux contre), nous assistions à la naissance d'une nouvelle association nationale. Immédiatement après, le président et les dix administrateurs étaient élus.

Les nouveaux administrateurs se sont ensuite réunis et ont décidé d'adopter, pour la première année, un style de gestion souple et axé sur la recherche d'un consensus, qui laisserait au président l'autorité nécessaire pour guider l'association durant sa première année d'organisation et de fonctionnement.

Le conseil d'administration a estimé que notre association devrait continuer à promouvoir l'approche populaire et fondée sur le bon sens, qui avait suscité l'appui de toutes les collectivités canadiennes dont l'industrie est axée sur les ressources. C'est en effet grâce à notre propre initiative que nous pourrions assurer l'avenir de nos villes natales.

C. EN QUOI CONSISTE NOTRE ASSOCIATION?

1. SES OBJECTIFS PRINCIPAUX

- (a) Aider à assurer un avenir plus sûr aux habitants des villes mono-industrielles et des collectivités dont l'industrie est axée sur les ressources, au Canada.
- (b) Se faire le porte-parole de tous les habitants de ces villes et collectivités, dans le but de les aider.
- (c) Sensibiliser la population canadienne à l'importance du secteur primaire pour le bien-être économique et social collectif et à l'importance des personnes et des sociétés qui exploitent et extraient ces ressources.
- (d) Promouvoir une nouvelle ère de mise en valeur des ressources et optimiser le potentiel qui existe à cette fin, à l'intérieur ou à proximité des villes mono-industrielles et des collectivités dont l'industrie est axée sur les ressources au Canada.
- (e) Partager entre nos membres les idées et l'expérience de chacun et appuyer mutuellement nos priorités.
- (f) Encourager la planification à long terme, l'expansion économique et la diversification industrielle des villes mono-industrielles et des collectivités tributaires de l'industrie primaire.
- (g) Aider les collectivités et les gouvernements à mettre sur pied et à améliorer les mécanismes de secours d'urgence qui sont nécessaires dans le cas où ces collectivités doivent régler les problèmes que posent les mises à pied et les fermetures.
- (h) Aider les collectivités et les gouvernements à évaluer et à résoudre les nombreux problèmes sociaux auxquels font face les membres de ces collectivités.
- (i) Convaincre ces personnes que, pour sauver leur ville, ils doivent compter non pas sur les gouvernements, mais sur leur propre initiative et sur leur propre engagement et faire eux-mêmes leur planification à long terme.

2. SA STRUCTURE

- (a) Nous sommes un organisme populaire, à but non lucratif, qui a été créé par un groupe de personnes intéressées, tout comme vous, et qui est accessible à tous ceux qui se préoccupent des problèmes touchant les villes mono-industrielles et les collectivités tributaires de l'industrie primaire au Canada.
- (b) Nous souhaitons former, à titre consultatif, une association avec tous les ordres de gouvernement, de même qu'avec l'industrie, les syndicats et les groupes communautaires en vue de poursuivre ensemble les objectifs de notre association.
- (c) Notre association est non partisane et n'appuie aucune orientation, ni aucun parti ou candidat politiques.
- (d) Nous souhaitons vivement trouver une approche équilibrée et raisonnable qui permette de régler efficacement les problèmes qui se posent aux habitants des villes mono-industrielles et des collectivités dont l'industrie est axée sur les ressources, et ce, indépendamment des caractéristiques de ces personnes, telles leur activité professionnelle, leurs affiliations, leur situation sur le marché du travail, leur sexe, leur âge, leur race, leur origine nationale ou ethnique, leur couleur, leur religion, leur état civil, leur handicap ou leur croyance.

3. LES SERVICES CONNEXES

- (a) Un bureau de conférenciers qui peuvent prononcer des allocutions sur des sujets touchant les villes mono-industrielles et l'exploitation des ressources au Canada.
Tarif : indemnité quotidienne négociable, plus les faux frais
- (b) Service de recherche sur des questions économiques et sociales touchant les villes mono-industrielles et les collectivités dont l'industrie est axée sur les ressources.
Tarif : contrats négociés sur une base individuelle
- (c) La préparation d'études indépendantes sur les incidences que la fermeture d'une entreprise peut avoir sur une collectivité en vue d'évaluer précisément les pertes totales pour celle-ci et de mesurer la portée des conséquences sociales et économiques sur ses habitants.
Tarif : contrats négociés sur une base individuelle
- (d) Préparation d'études de diversification indépendantes visant à connaître le potentiel du développement économique et de la diversification industrielle d'une collectivité.
Tarif : contrats négociés sur une base individuelle

D. L'INEFFICACITÉ DES PROGRAMMES GOUVERNEMENTAUX À L'ÉGARD DES COLLECTIVITÉS MENACÉES DE FERMETURE

Un des volets du mandat du groupe de travail canado-manitobain sur les collectivités minières portait sur l'évaluation des programmes existants d'aide aux collectivités minières en péril. Si j'ai employé le terme "Inefficacité des programmes gouvernementaux", c'est que, selon mon expérience, les programmes existants ne répondent pas aux besoins des collectivités menacées de fermeture.

Nous avons, il est vrai, élaboré des programmes permettant l'évacuation rapide des collectivités qui sont sérieusement menacées. Toutefois, il n'existe aucun programme qui réponde efficacement aux besoins de développement de ces mêmes collectivités ou à ceux des habitants qui ne veulent pas quitter leur ville.

À Lynn Lake, par exemple, notre étude a montré que, sur 48 priorités et projets, 37 (ou 77 p. 100) ne correspondaient à aucun "programme connu". Les fonctionnaires peuvent nous expliquer pourquoi nos priorités ne répondent pas aux critères des programmes, mais ils s'empêchent dans ces mêmes critères lorsqu'ils essaient honnêtement de traiter nos priorités avec logique.

Il faudrait donc que les collectivités deviennent plus souples et trouvent des moyens pour faire correspondre les programmes à leurs priorités plutôt que d'accorder celles-ci aux programmes.

1. Commentaires de l'honorable Flora MacDonald, C.P., député et ministre de l'Emploi et de l'Immigration

Afin de prouver davantage ce point et parce que je ne saurais mieux l'exprimer, j'aimerais citer quelques remarques faites par l'honorable Flora MacDonald, C.P., député et ministre de l'Emploi et de l'Immigration, à la conférence de l'industrie canadienne de l'acier, tenue à Sault-Sainte-Marie (Ontario), le 6 mai 1985.

(Traduction non officielle)

- "... assurer la stabilité de nos collectivités n'est pas une pensée après coup, mais constitue, au contraire, la condition préalable à la croissance."
- "Nous devons préserver la valeur de la collectivité."
- "Je crois qu'ils (nos efforts) n'ont pas été réellement couronnés de succès."
- "Nous avons attendu que la crise survienne et nous avons alors cherché tant bien que mal à atténuer les pires conséquences."

- . "Nous avons souvent réussi à éviter la désagrégation sociale, mais avons rarement favorisé le développement."
- . "Nous sommes trop souvent arrivés trop tard."
- . "L'orientation du présent gouvernement sera axée sur la prévoyance et le développement."
- . "Notre approche sera flexible."
- . "Nous assurerons la formation des travailleurs avant qu'ils ne soient licenciés -- avant la fermeture des usines."
- . "L'accent sera mis sur le soutien de l'esprit d'entreprise et sur l'incitation à créer des petites entreprises viables."
- . "Notre approche nous obligera à trouver de nouvelles façons d'utiliser le système fiscal en vue d'aider au renouveau économique et à l'adaptation qu'il suppose."
- . "Je reconnais que, pour certains, la mobilité peut être l'ultime moyen de s'en sortir."

Par la suite, Mme MacDonald a décrit les quatre grands principes du nouveau Programme de développement des collectivités, que son ministère est en train d'élaborer.

- (i) Mettre au point un mécanisme d'avertissement qui permette de prévoir les changements et non seulement de réagir après le fait.
- (ii) Assouplir les programmes afin de répondre aux besoins réels de chaque collectivité.
- (iii) Mettre sur pied des comités locaux d'adaptation qui soient plus accessibles et présents dans un plus grand nombre de collectivités, et ce, bien avant que les avis de licenciement ne soient affichés, et prendre les mesures nécessaires pour diversifier l'économie locale et créer ainsi de nouvelles perspectives et de nouveaux emplois.
- (iv) Créer un organisme unique qui réunirait nos services de développement industriel et d'adaptation de la main-d'oeuvre.

Notre association approuve entièrement toutes les déclarations de Mme MacDonald et la félicite d'avoir eu le courage de s'attaquer à une tâche que les habitants des villes mono-industrielles du Canada considèrent comme essentielle à leur survie à long terme. Mme MacDonald et son ministère peuvent compter sur l'appui et l'aide inconditionnels de notre association.

2. LES PRINCIPAUX PROBLEMES

Comme première étape de notre apport à cet effort commun, j'aimerais formuler ici l'interprétation de ce que nous jugeons être les principaux problèmes.

(a) PROBLEME : Les gouvernements fédéral et provinciaux, de même que les administrations locales, ne possèdent aucun plan de secours en cas de fermeture de mines. Tous les gouvernements attendent que le danger soit imminent avant de réagir.

(b) PROBLEME : Il n'existe aucune planification à long terme pour le développement des collectivités minières.

(c) PROBLEME : Il n'existe aucune stratégie de développement économique pour les régions rurales et éloignées du Canada.

- Exploitation des ressources
- Besoins en infrastructure
- Développement des ressources humaines
- Développement communautaire

Les gouvernements se bornent généralement à combler les besoins courants plutôt que de chercher à suivre un "plan maître". Les programmes de développement sont toujours axés sur des projets précis au lieu d'être intégrés dans une stratégie globale de développement. Ce problème est accentué par le manque de coordination et de coopération entre les divers ministères et ordres de gouvernement. Bien que toutes les collectivités planifient leur développement futur, les gouvernements ne prennent pas les décisions qui s'imposent pour harmoniser entre eux ces plans, établis à l'échelle locale, et les intégrer dans une stratégie de développement globale et réaliste.

(d) PROBLEME : L'accès à la vaste gamme des programmes gouvernementaux est trop compliqué pour que les collectivités rurales et éloignées puissent en tirer pleinement parti.

Dans notre étude sur la ville de Lynn Lake, nous avons tenté de faire correspondre les priorités aux programmes existants que nous connaissions. Voici les résultats, pour le moins surprenants, de cet exercice :

Lynn Lake Priorités/projets - 48
Aucun programme connu - 37 (77%)

Nous sommes certains que, lorsque les fonctionnaires fédéraux et provinciaux examineront ce rapport, ils trouveront un certain nombre de programmes que nous ne connaissions pas. Aussi, ma question sera-t-elle : "Pourquoi ne nous les avez-vous pas mentionnés avant? Vous étiez pourtant au courant de la plupart de ces priorités depuis le 16 octobre 1984."

Un programme devient absolument inutile si les collectivités n'en connaissent pas l'existence ou si le système de prestation est si compliqué que même les collectivités en péril ne peuvent y avoir accès ou ne peuvent y avoir accès à temps.

(e) PROBLÈME : Les gouvernements ne réagissent pas assez vite dans le cas des collectivités que menace une fermeture.

Étant donné qu'il n'existe aucun plan de secours en cas de fermeture, aucun plan de développement communautaire à long terme, aucune stratégie de développement pour les régions rurales et éloignées et qu'il est difficile d'avoir accès aux programmes gouvernementaux, tous les ordres de gouvernement essaient tant bien que mal, lorsqu'une mine ferme, d'aider la ville en péril à se tirer d'affaire. Les habitants appelés à vivre une pareille expérience souffrent inévitablement d'anxiété aiguë; les autorités locales, qui voudraient que les choses bougent, se sentent frustrées; et le public réagit négativement aux décisions prises par les gouvernements provinciaux et fédéral.

E. UNE NOUVELLE APPROCHE POUR L'AVENIR

Afin de pouvoir surmonter ces graves problèmes ou obstacles, il faut envisager un certain nombre de nouvelles mesures. Tout en étant d'accord sur l'objectif du Programme de développement des collectivités et sur les principes énoncés par l'honorable Flora MacDonald, nous reconnaissons également qu'il est difficile de transformer ce rêve en réalité. C'est pourquoi notre association offre directement son aide pour établir les politiques et procédures de ce nouveau programme.

Dans un premier temps, nous avons exposé ce que nous considérons être les principaux problèmes. Dans un deuxième temps, nous voulons recommander les solutions suivantes :

1. Les plans de secours en cas de fermeture

Préparer, des années à l'avance, un plan de secours pouvant s'appliquer en cas de fermeture de toutes les mines. Ce plan devrait préciser clairement les responsabilités de chacun des principaux intervenants, qui sont :

- le gouvernement fédéral
- le gouvernement provincial
- l'administration locale
- l'entreprise
- les syndicats.

2. Les plans de développement communautaires à long terme

Tous les habitants d'une collectivité ont le droit de connaître l'avenir qui est réservé à leur ville en cas de fermeture de la mine. Voici les deux seuls choix réellement possibles :

- (i) Implanter une autre assise économique
- (ii) Fermer la ville

Nous devons analyser attentivement la possibilité d'implanter d'autres industries primaires à proximité de la collectivité minière, et définir quelle serait la stratégie d'avenir la plus appropriée. Si l'on choisit la première solution, il faudra alors poursuivre cet objectif avec acharnement. Si, par contre, la fermeture de la ville est inévitable, chacun devrait le savoir plusieurs années d'avance et chacun (y compris les gouvernements) devrait pouvoir planifier en conséquence son investissement dans la collectivité.

3. Les stratégies globales de développement régional

Travailler conjointement avec tous les ordres de gouvernement (fédéral, provincial et local), avec l'apport de l'industrie privée, des syndicats et des groupes communautaires, en vue d'élaborer des plans de développement globaux à long terme (dix ans) pour les régions rurales et éloignées. Les investissements sont ensuite décidés en fonction de ce "plan maître". Aussi, durant les années de prospérité, les collectivités pourraient progresser rapidement vers leurs objectifs de développement ultimes alors que, durant les moins bonnes années, elles ne progresseraient pas aussi rapidement, mais chacune saurait au moins que son objectif ultime consiste à mener à terme les projets décrits dans le plan. Cette approche de planification à long terme aurait le mérite d'encourager l'investissement privé et d'assurer la stabilité de toutes les collectivités du nord du Canada.

4. L'accès simplifié aux programmes gouvernementaux

Établir "un bureau central", avec un numéro de libre appel, où les gens pourraient appeler pour communiquer leurs idées et leurs projets et où on leur indiquerait quels sont les programmes les plus appropriés. Ce "bureau central" pourrait également répondre à des demandes écrites.

Dans le cas où aucun programme connu n'existe pour répondre à un besoin, le "bureau central" pourrait fournir aux demandeurs des conseils sur la marche à suivre ultérieurement. Il pourrait être considéré comme la première étape de l'implantation du "guichet unique" recommandé à l'égard des projets de développement.

Les avantages d'une telle approche sont nombreux, mais l'un des principaux serait de minimiser le nombre des demandes adressées aux ministres et aux autres représentants élus. D'autre part, le gouvernement pourrait donner suite plus efficacement aux demandes et ainsi éviter leur rebondissement dans la sphère politique.

L'objectif à long terme devrait être d'élaborer des programmes qui conviennent à nos priorités plutôt que d'essayer d'adapter nos priorités aux programmes. C'est ensemble que nous parviendrons à améliorer la situation.

5. L'amélioration des mécanismes de secours en cas d'urgence

En attendant que soient élaborés les plans de secours en cas de fermeture, les plans de développement communautaire à long terme et les stratégies globales de développement régional et que soit amélioré l'accès aux programmes gouvernementaux, il nous faudra encore agir lorsque des mines fermeront.

Il faut donc améliorer le mécanisme de secours en cas d'urgence de manière à pouvoir traiter adéquatement les problèmes des collectivités touchées par la fermeture de leur mine. Voici nos recommandations à cet égard :

- (a) Tous les ordres de gouvernement doivent faire preuve d'une bonne volonté politique en s'engageant clairement à veiller sur l'avenir des collectivités.
- (b) Les gouvernements ne doivent pas abandonner prématurément tout espoir de développement futur d'une collectivité avant d'avoir épuisé toutes les possibilités.
- (c) Les gouvernements doivent mettre en place un mécanisme quelconque permettant d'avoir des provisions budgétaires spéciales pouvant être rapidement affectées aux priorités des collectivités.

- Des subventions pour la formation scolaire
- Des subventions pour les services conseils
- Des subventions pour les projets et programmes de développement
- Des subventions pour le maintien des services essentiels
- Des subventions pour les stimulants industriels
- Des subventions pour le capital de risque nécessaire au développement de nouvelles affaires
- Des subventions pour les programmes d'adaptation
- Des subventions pour les besoins en infrastructure

- (d) Les gouvernements doivent devenir plus souples et développer une approche davantage "axée sur l'action", à l'endroit des collectivités en péril. Les décisions ne devraient pas toutes être prises par le Cabinet ou par le Conseil du Trésor.

Le gouvernement (le Cabinet) devrait engager certains fonds dont le montant correspondrait à la gravité de la situation, laquelle serait déterminée d'après l'étude des incidences sur la collectivité. Quant aux décisions concernant la façon de dépenser ces fonds, elles devraient être prises par une "équipe locale de gestion de la crise", formée de représentants des gouvernements fédéral et provinciaux, de l'administration locale, de l'entreprise, des syndicats et des groupes de défense d'intérêts.

De cette manière, les collectivités pourraient réagir rapidement et directement aux priorités qu'elles auraient établies. Par ailleurs, les intérêts de toutes les parties seraient protégés, tout en permettant à la collectivité d'exercer un contrôle plus serré sur sa propre destinée.

- (d) Les gouvernements doivent développer devenir plus aptes à répondre aux idées proposées par les collectivités et être en mesure de charger certaines personnes d'examiner ces idées et de recommander la marche à suivre.

À l'heure actuelle, non seulement les idées avancées par les collectivités n'aboutissent-elles nulle part, à moins qu'une proposition ne soit rédigée, mais encore est-il impossible que chaque collectivité prépare une proposition pour chaque idée; c'est pourquoi certaines idées, qui pourraient être bonnes, sont abandonnées sans avoir été examinées, en raison du manque de ressources humaines.

Il faudrait donc que les bureaucrates se consacrent à cette tâche et soient capables de documenter leur examen de ces idées ou que des consultants soient engagés pour le faire ce travail.

Prenons l'exemple de la ville de Lynn Lake, qui a disposé pendant une année des services à temps plein d'un agent de développement. Pendant plus de onze mois, les bureaucrates ont reçu des listes d'idées pour le développement de Lynn Lake, mais seul un petit nombre ont été examinées à fond. De plus, il n'a été possible de rédiger des propositions que pour quelques-uns des projets prioritaires. Il faut trouver le moyen de développer un système de réponse plus adéquat.

F. QUELQUES IDÉES POUR LA MARCHE À SUIVRE ULTÉRIEUREMENT

Avant et pendant notre première conférence, nous avons demandé à tous les délégués ainsi qu'à toutes les collectivités et à tous les groupes de soutien de déterminer les obstacles les plus importants auxquels ils font face dans leur collectivité et de formuler leurs recommandations quant à la façon de s'y prendre pour franchir ces obstacles. Vous trouverez ci-dessous le sommaire des résultats.

Notre association est prête à travailler sans désespérer avec le gouvernement, l'industrie, les syndicats et les autres groupes de défense d'intérêts afin de s'assurer que chacun des points qui suivent soient sérieusement examinés et afin d'aider à l'élaboration d'un plan de mise en oeuvre ou, dans le cas où les mesures proposées ne peuvent être appliquées, afin de transmettre aux collectivités les explications documentées sur les raisons du refus.

1. Vingt-quatre pour cent (24 p. 100) de tous les députés fédéraux représentent des circonscriptions qui dépendent majoritairement de villes mono-industrielles. Aussi, avant que des changements importants ne puissent être faits en matière de mise en valeur des ressources au Canada, faut-il que se manifeste clairement la volonté politique de traiter plus efficacement et plus équitablement les habitants des villes mono-industrielles du Canada. Le statu quo est inacceptable.

2. Nous devons encourager les gouvernements fédéral et provinciaux à concevoir des programmes traitant précisément des problèmes auxquels font face toutes les collectivités tributaires d'une seule industrie primaire.

- (a) Les programmes appropriés en cas de fermetures
 - visant ceux qui veulent demeurer dans leur ville
 - visant ceux qui veulent la quitter
- (b) Les programmes visant à régler le problème de l'alternance des périodes de prospérité et de dépression que connaissent les industries primaires.

3. Nous devons encourager les gouvernements fédéral et provinciaux à mettre en oeuvre toutes les recommandations formulées en 1982 par le Groupe de travail fédéral-provincial-territorial sur les communautés minières et à appliquer ces mêmes recommandations, si possible, aux autres villes mono-industrielles du Canada.
4. Nous devons encourager le gouvernement à envisager la mise en valeur des ressources minérales non renouvelables comme une occasion "unique" de couvrir les coûts de l'infrastructure de base, c'est-à-dire les routes, les aéroports, les écoles, les hôpitaux, etc., qui, elle, peut mener à la viabilité à long terme, grâce à la mise en valeur et à la gestion intensives du secteur des ressources renouvelables (c'est-à-dire les forêts, les fourrures, la pêche, le tourisme et les services publics).
5. Les collectivités minières et les villes mono-industrielles doivent être encouragées à diversifier leur assise industrielle par la mise en valeur de toutes les ressources de la région (les forêts, les fourrures, la pêche, le tourisme, l'agriculture, etc.).
6. Nous devons transformer et manufacturer davantage les matières premières dans les collectivités ou les régions mêmes où elles sont extraites. Les régions du nord du Canada devraient commencer à expédier des produits finis plutôt que des matières premières.
7. Nous devons cultiver au maximum notre aptitude à devenir plus autonomes, en fabriquant sur place une plus grande partie des biens essentiels que nous utilisons dans nos collectivités et dans notre région.
8. Nous devons encourager toutes les entreprises à assumer davantage leur responsabilité sociale à titre de société dans leurs relations avec les habitants des villes mono-industrielles, en faisant participer la collectivité au processus décisionnel de l'entreprise.
9. Nous devons examiner comment les autres pays mettent en valeur leurs industries primaires et comment se développent les collectivités où elles sont implantées. Des pays comme la Suède, la Finlande, l'Australie et l'Union Soviétique ont certainement beaucoup à nous apprendre.
10. Nous devons encourager le gouvernement à déterminer qu'elles sont les villes mono-industrielles qui sont menacées de façon imminente, c'est-à-dire dont la fermeture de leur seule industrie est prévue d'ici cinq ans.

11. Nous devons élaborer des plans de secours en cas de fermeture, des années avant que celle-ci ne survienne. Toutes les fermetures se faisant dans des conditions presque identiques, nous devrions disposer d'un modèle quant à la marche à suivre plutôt que d'obliger chaque collectivité et chaque entreprise à "réinventer la roue" à chaque fois.

12. Nous devons encourager le gouvernement à élaborer un mécanisme de secours plus adéquat pour les villes mono-industrielles en péril. Voir page

13. En cas de fermeture, nous devons encourager le gouvernement à faire autant pour ceux qui veulent rester dans la ville que pour ceux qui veulent la quitter.

14. Quant la fermeture d'une ville devient inévitable, nous devons encourager le gouvernement à prévoir une indemnisation équitable pour les propriétaires fonciers;

(a) en leur permettant de déduire de leur revenu futur les pertes subies sur leur propriété, OU

(b) en les indemnisant directement de leur perte totale en avoir.

15. Nous devons sensibiliser les citoyens à l'importance du secteur primaire et à son apport au bien-être économique et social de l'ensemble de la société.

Notre association se propose, dans un premier temps, de concevoir avec le gouvernement un programme de parrainage pour les études et la recherche du second cycle, dans les principaux domaines suivants :

- la mise en valeur des ressources naturelles
- les relations entre le développement du nord du Canada et la vie urbaine
- le développement des collectivités rurales et éloignées
- l'esprit d'entreprise dans les régions du nord du Canada et dans les régions éloignées
- le coût total de la fermeture d'une mine et de la désagrégation d'une collectivité
- les coûts sociaux et économiques associés à la fermeture de la ville d'Uranium City
- etc.

16. Nous devons prôner une plus grande décentralisation des services gouvernementaux en vue d'offrir un meilleur service au public et de stabiliser les villes mono-industrielles du Canada.

17. Nous devons transformer certaines villes mono-industrielles en centres régionaux dotés d'une assise économique diversifiée, qui desserviraient un certain nombre de collectivités de la région.

18. Nous devons encourager le gouvernement à revoir ses pratiques d'investissement à l'étranger qui font que, bien souvent, notre gouvernement et nos banques prêtent de l'argent à des pays étrangers pour mettre sur pied des industries qui concurrencent directement les entreprises canadiennes. Nous devons, bien sûr, aider les autres pays, mais non de façon à mettre en péril l'emploi de Canadiens, comme c'est le cas lorsqu'une ville mono-industrielle est forcée de disparaître.

19. Nous devons encourager Investissement Canada (qui a succédé à l'AEIE) à axer les investissements étrangers sur certaines régions ou collectivités choisies.

20. Nous devons tirer profit de l'esprit d'entreprise qui existe abondamment dans le Nord, mais qui n'a jamais été exploité, en améliorant les mécanismes de prestation des programmes de formation dans le domaine des affaires et des services de conseil existants.

21. Nous devons effectuer des études de diversification pour toutes les villes mono-industrielles et toutes les collectivités dont l'industrie est axée sur les ressources.

22. En se fondant sur l'expérience des autres villes mono-industrielles qui ont réussi à diversifier leur économie, nous devons élaborer "un modèle de réussite" que toutes les collectivités pourraient suivre.

23. Nous devons intensifier considérablement nos efforts de recherche de nouveaux minerais dans les régions situées à proximité des villes mono-industrielles menacées.

24. Nous devons encourager le gouvernement à mettre en place un véritable "organe centralisateur" pour le développement économique du Canada. Actuellement, les propositions de développement doivent être transmises à plusieurs ministères fédéraux et provinciaux pour y être examinées en fonction d'un éventail de programmes. Aussi serait-il beaucoup plus sensé de faire parvenir les propositions à un seul organisme qui s'occuperait de passer en revue les nombreux programmes pour trouver ceux qui conviennent le mieux et qui développerait des mesures spéciales là où aucun programme approprié n'existe.

25. Nous devons encourager la création d'un fonds de réserve national, qui s'avère nécessaire pour régler les problèmes des collectivités mono-industrielles ou dont l'industrie est axée sur les ressources, au Canada. Ce fonds pourrait être conçu d'après la Réserve pour les collectivités minières du Manitoba ou s'inspirer du "principe du risque partagé", les cotisations au fonds provenant, de façon proportionnelle, des gouvernements fédéral et provinciaux, des administrations municipales, des entreprises et des employés.

26. Nous devons également examiner les façons d'établir un fonds de diversification communautaire que les collectivités pourraient utiliser pour réaliser les projets qu'elles jugent les plus importants. D'une part, les collectivités auraient un meilleur contrôle de leur destin et, d'autre part, le gouvernement se sentirait moins contraint de trouver lui-même toutes les réponses.

27. Nous devons stimuler le développement des régions rurales et de celles du nord du Canada en élaborant un régime fiscal régional semblable, par exemple, à celui de l'Australie, où les habitants des collectivités éloignées bénéficient d'un régime d'impôt progressif qui leur permet de payer moins d'impôt que les citadins. D'autres mesures fiscales pourraient également être envisagées.

28. Nous devons encourager le gouvernement à permettre aux entreprises des villes mono-industrielles à investir dans l'infrastructure communautaire une partie de leurs revenus avant impôts, plutôt qu'après impôts, comme c'est le cas à l'heure actuelle.

29. Nous devons concevoir des stimulants visant à inciter les industries à investir dans les régions rurales et éloignées et dans celles du nord du Canada. Par exemple, la mise en oeuvre d'une mesure semblable à celle que l'honorable Sinclair Stevens a appliquée au Cap-Breton contribuerait certainement à l'expansion économique. Dans un premier temps, nous recommandons de faire l'essai de cette mesure en la réservant aux habitants du Nord qui désirent se lancer en affaires dans une collectivité rurale ou éloignée.

30. Le système de "paliers" propre aux subventions du PEDIR est absolument injuste et devrait être restructuré immédiatement afin que les collectivités menacées de fermeture puissent encourager des industries à venir s'établir sur leur territoire.

31. Nous devons inciter le gouvernement à établir un réseau de transport est-ouest dans le Nord, qui ne peut compter actuellement que sur les liaisons traditionnelles entre le Nord et le Sud (c'est-à-dire, les routes et les lignes aériennes et ferroviaires).

32. Nous devons encourager le gouvernement à effectuer une enquête sur la planification des ressources semblable au Mineral Planning Survey préparé dans les années 70, qui prévoyait les fermetures et les ouvertures de mines pour une période de 20 ans. Une telle approche à long terme portant sur l'extraction des ressources est essentielle à la survie du pays et, à fortiori, à celle de plus de 350 collectivités dont l'industrie est axée sur les ressources.

33. Nous devons envisager la création d'un fonds semblable au Fonds suédois d'investissement, qui permet aux entreprises d'investir, en période de prospérité, jusqu'à 50 p. 100 de leurs profits dans un fonds d'investissement contrôlé par le gouvernement et de bénéficier d'une déduction d'impôt. Durant les périodes de récession ou de perturbation cyclique de l'industrie, le fonds peut être utilisé par les entreprises. Celles-ci en retirent donc le double avantage de bénéficier de déductions d'impôt en période de prospérité et d'avoir facilement accès à une réserve de capitaux durant les années économiquement difficiles.

34. Nous devons voir quelle a été la réussite du système de coopératives communautaires (community co-op) qui a été implanté en Grande-Bretagne et celui des coopératives industrielles qu'a mis en oeuvre l'Espagne.

35. Nous devons examiner la possibilité de protéger l'industrie minière canadienne au moyen de tarifs douaniers ou de quotas, particulièrement lorsque la survie d'une collectivité est en jeu.

36. Nous devons encourager les gouvernements fédéral et provinciaux à concevoir une stratégie de développement à long terme (vingt ans) destinée au secteur des ressources naturelles au Canada, en mettant l'accent sur la planification sectorielle et sur le développement régional. Grâce à des objectifs et à des plans gouvernementaux bien précis, les entreprises seront encouragées à investir, aidant ainsi le secteur des ressources naturelles à se stabiliser.

Étant donné que cette liste est loin d'être exhaustive, nous encourageons tous ceux qui liront ce document à faire connaître leurs idées à notre association. De notre côté, nous veillerons à ce qu'elles soient examinées le plus à fond possible.

G. UN MESSAGE À L'INTENTION DE TOUTES LES VILLES
MONO-INDUSTRIELLES

Voici l'un des plus importants objectifs de notre association :

"Convaincre les habitants des villes mono-industrielles et des collectivités tributaires de l'industrie primaire que, pour sauver leur ville, ils doivent compter non pas sur les gouvernements, mais sur leur propre initiative et sur leur propre engagement et faire eux-mêmes leur planification à long terme."

Ceux qui se battent actuellement pour la survie de leur ville sont certainement animés d'une grande ardeur et il ne saurait exister une meilleure occasion de battre le fer pendant qu'il est chaud. Votre plus grande erreur pourrait bien être d'avoir attendu trop longtemps avant d'agir.

Nombreux sont les habitants des villes mono-industrielles et des collectivités tributaires de l'industrie primaire qui ont vécu des moments difficiles, ce qui risque d'être le sort d'un nombre encore plus grand à l'avenir. Plusieurs collectivités ont tiré de dures leçons d'une pareille expérience et c'est pourquoi nous voulons, dans cette partie du document, vous en communiquer quelques-unes.

LES DURES LEÇONS TIRÉES DES ÉVÉNEMENTS

1. S'Y PRENDRE D'AVANCE
 - . Commencez vos efforts de diversification dès maintenant! Il faut au moins cinq ans avant d'en voir les résultats.
2. REMUE-MÉNINGES
 - . Faites converger toutes vos idées en un point central.
3. TRAVAILLEZ ENSEMBLE
 - . Travaillez de concert avec les collectivités de votre région. Tentez de développer la région plutôt que de vous en tenir uniquement à une collectivité.

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42nd ANNUAL CONFERENCE OF PROVINCIAL
MINISTERS OF MINES

Report of the Committee of Provincial Geologists
to the Mines Ministers' Meeting
Charlottetown, September 17, 1985

Saskatchewan



CHARLOTTETOWN, P.E.I.
September 17, 1985

Report of the Committee of Provincial Geologists
to the Mines Ministers' Meeting
Charlottetown, September 17, 1985

by

J.E. Christopher, Chairman, Saskatchewan

Mr. Chairman, Honourable members and delegates, it is with pleasure that I report to you this account of the activities of the Committee of Provincial Geologists for the year, since the Meeting of the Provincial Mines Ministers' in Yellowknife.

The Committee of Provincial Geologists comprises the heads of the Geological Surveys or their equivalent for each of the ten provinces, the Northwest Territories and the Yukon.

The Committee is guided by the principles:

1. to coordinate geological affairs between the provinces;
2. promote uniformity where that is desirable and,
3. provide scientific and resource liaison with industry in regard to exploration and development.

In meeting this mandate, the Committee serves as a clearing house for action taken collectively or individually to carry out the provincial programs.

1. This Committee is pleased to report that the objective set by the Mines Ministers' Meeting at Regina in 1983, that is, to constitute Provincial Mineral Advisory Committees for each province and territory has now been met. These Committees are tailored to the local geopolitical fabric, but all serves to provide industry input to Geological and Mineral Development Programs of the Geological Surveys.

Provinces in the early phases of the process are learning through this Committee from the success and mistakes of advisory committees formed earlier in the pioneering provinces.

2. The Mineral Development Agreements have also received considerable attention. Again, the experience developed in those provinces first involved with the setting up of these agreements, has been put to good use by those following. For instance, the early implementation of the Manitoba M.D.A. has served to facilitate those of Saskatchewan and Newfoundland, among others.

3. Volume 2 of the Provincial Geologists Journal, was released. This Journal is printed by courtesy of Alberta, but with contributions in the compilation from all provinces and territories. The volume is a compendium of the Provincial Geological Surveys. It presents an immediate cross-section of their organizational structure, budgetary expenditures, reports of field activities, calendar of Open Houses, geological publications, as well as, a comparative article on Mineral Regulations across Canada.
4. In setting up or amending mineral exploration regulations from a government's point of view, or in making decisions with respect to exploration from the industry's point of view, knowing how one province's regulations compares with another, may be of great importance. Such information is difficult to come by efficiently.

The Committee has attempted to rectify this situation in compiling a comparative study involving all members, and has published the results in volume 2 of the Provincial Geologists Journal.

5. In March, 1984, as in other years, the Committee has participated in the Prospectors and Developers Association annual meeting. This participation has taken the form of displays by each province of its geological and mineral assets, in a setting devoted wholly to the provinces. Likewise, a block of time in the lecture sessions was dedicated to papers dealing with mineral prospects in selected provinces. Through the Prospectors and Developers Association, the geological surveys have a potential market for their services of some 3000 in the financial industry.
6. Currently, the Committee is exploring the types of incentives to exploration offered by the provinces, especially those with large programs, for applicability elsewhere.
7. The Committee has extended to the territorial governments of the Northwest Territories and the Yukon, status of observers on the Committee, should they choose to exercise it.
8. The Provincial Geologists Committee not only provides linkages with the Provincial Surveys but also itself has a linkage with programs of the Geological Survey of Canada through the National Geological Surveys Committee. This Committee meets annually.

In closing, the Committee of Provincial Geologists acknowledges the support of its Ministers in the execution of its mandate, not only in the bi-annual meetings, but also in their home offices where many of the projects are carried out.

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42^e CONFÉRENCE ANNUELLE DES
MINISTRES PROVINCIAUX DES MINES



Rapport du Comité des géologues provinciaux
à la réunion des ministres des Mines,
Charlottetown, le 17 septembre 1985

Saskatchewan

CHARLOTTETOWN (Î.-P.-É.)
Le 17 septembre 1985

Rapport du Comité des géologues provinciaux
à la réunion des ministres des Mines,
Charlottetown, le 17 septembre 1985

par

J.E. Christopher, président, Saskatchewan

Monsieur le président, distingués membres et délégués, je suis heureux de vous présenter le présent rapport des activités menées par le Comité des géologues provinciaux au cours de l'année qui s'est écoulée depuis la réunion des ministres provinciaux des Mines tenue à Yellowknife.

Le Comité des géologues provinciaux est constitué des directeurs des commissions géologique des dix provinces ainsi que des Territoires du Nord-ouest et du Yukon, ou leur équivalent.

Le mandat du Comité consiste

1. à coordonner des échanges à caractère géologique entre les provinces;
2. à favoriser l'uniformité là où c'est souhaitable et
3. à assurer une liaison avec l'industrie, sur le plan scientifique et sur celui des ressources, en matière d'exploration et de développement.

Dans ce contexte, le Comité sert de carrefour d'information sur les activités collectives et individuelles visant l'exécution des programmes provinciaux.

1. Le Comité est heureux de signaler que l'objectif fixé à la réunion des ministres des Mines, tenue à Regina en 1983, soit de mettre sur pied des comités consultatifs du secteur minier dans chaque province et territoire a été atteint. Ces comités sont adaptés aux conditions géopolitiques locales et sont tous destinés à favoriser la participation de l'industrie aux programmes de développement géologique et minier des commissions géologiques.

À ce stade initial du processus, les provinces sont mises au courant, par le Comité, des succès et des échecs de comités consultatifs créés antérieurement dans les provinces qui ont fait oeuvre de pionnier.

2. Les accords de mise en valeur des minéraux ont également reçu une attention considérable. Ici encore, l'expérience des premières provinces qui ont participé à l'élaboration des ententes en question a été profitable à celles qui ont suivi. Par exemple, la mise en oeuvre initiale, d'un tel accord au Manitoba a notamment facilité la tâche à la Saskatchewan et à Terre-Neuve.

3. Le deuxième volume du journal des géologues provinciaux a été distribué. Son impression est une courtoisie de l'Alberta, mais toutes les provinces et les territoires ont participé à sa préparation. Le volume est donc un recueil des commissions géologiques provinciales. Il renferme une description représentative exacte de leur organisation, de leurs dépenses budgétaires, de leurs activités concrètes, de leur programme de jours d'accueil, de leurs publications géologiques ainsi qu'un article comparant la réglementation dans le secteur minier partout au Canada.
4. Il peut être extrêmement important pour un gouvernement qui désire établir ou modifier des règlements touchant l'exploration minière ou pour l'industrie qui doit prendre une décision se rapportant à l'exploration de pouvoir comparer les règlements des différentes provinces. Or, il est difficile de se procurer des renseignements satisfaisants à cette fin.

Le Comité s'est efforcé de corriger la situation en procédant à une étude comparative à laquelle ont participé tous les membres et dont les résultats ont été publiés dans le volume 2 du journal des géologues provinciaux.

5. Comme par le passé, le Comité a participé, en mars 1984, à l'assemblée annuelle de la Prospectors and Developers Association. Chaque province a fait étalage de ses ressources géologiques et minières puisque la formule de participation était conçue entièrement en fonction des provinces. En outre, une partie de la période des exposés a été réservée à des interventions portant sur les perspectives minières dans certaines provinces. Grâce à la Prospectors and Developers Association, le marché pour les services des commissions géologiques pourrait être de 3 000 clients du secteur de la finance.
6. Le Comité étudie à l'heure actuelle différents genres de stimulants à l'exploration offerts par les provinces, surtout celles qui offrent des programmes importants, pour voir s'il n'y aurait pas lieu de les appliquer ailleurs.
7. Le Comité accorde le statut d'observateur aux gouvernements des Territoires du Nord-ouest et du Yukon si ceux-ci décident de s'en prévaloir.
8. Le Comité des géologues provinciaux assure non seulement une liaison avec les commissions géologiques provinciales, mais il entretient également des rapports directs avec des programmes de la Commission géologique du Canada par l'entremise du Comité national d'études géologiques qui réunit à chaque année.

En terminant, le Comité des géologues provinciaux signale que l'appui des ministres a été fort utile pour l'exécution de son mandat non seulement aux réunions semestrielles, mais également dans les diverses provinces respectives où de nombreux projets sont menés.

DOCUMENT: 860-158/011

42nd ANNUAL CONFERENCE OF PROVINCIAL
MINISTERS OF MINES

Recommendations of the Chief
Inspectors of Mines to the
Provincial Mines Ministers

Ontario



CHARLOTTETOWN, P.E.I.
September 17, 1985

RECOMMENDATIONS OF THE CHIEF INSPECTORS OF MINES TO THE
PROVINCIAL MINES MINISTERS

IN KEEPING WITH THE THEME

"MINES AND ENERGY IN THE 1980'S, A NEW ERA OF
COOPERATION".

NATIONAL MINE RESCUE COMPETITION

1. IT WAS AGREED THAT A TRULY-NATIONAL, TASK ORIENTED, MINE RESCUE
COMPETITION MUST BE HELD ON AN ANNUAL BASIS.
2. THE NATIONAL COMPETITION HELD IN GLACE BAY, NOVA SCOTIA ON
SEPTEMBER 13 AND 14, 1985 WAS A COMPLETE SUCCESS. THE
FOLLOWING TEAMS PARTICIPATED:

UNITED KENO HILL	-	YUKON
NANISIVIK	-	NORTHWEST TERRITORIES
WESTAR MINING LTD.	-	BRITISH COLUMBIA
"COMPOSITE" TEAM	-	ALBERTA
POTASH CORPORATION OF SASKATCHEWAN (LANIGAN MINES)	-	SASKATCHEWAN
BRUNSWICK MINING AND SMELTING	-	NEW BRUNSWICK
LINGAN PHALEN	-	NOVA SCOTIA
NEWFOUNDLAND ZINC MINES LTD.	-	NEWFOUNDLAND

THE ATTACHED BROCHURE SHOWS THE SCHEDULE OF EVENTS, TEAM
MEMBERS AND JUDGES.

3. LABOUR CANADA HAS TAKEN VIDEO TAPES OF THE COMPETITION AND
COPIES, AFTER EDITING, WILL BE SENT TO THE CHIEF INSPECTORS OF
MINES FOR PRESENTATION TO MINING ASSOCIATIONS, LABOUR UNIONS
AND OTHER INTERESTED GROUPS.

4. NATIONAL MINE RESCUE COMPETITIONS ARE ESSENTIAL TO ENSURE THAT MINE RESCUE PERSONNEL ACROSS CANADA ARE FULLY FAMILIAR WITH STANDARD PROCEDURES, SO THAT ANY CANADIAN TEAM CAN PARTICIPATE IMMEDIATELY IN AN EMERGENCY AT ANY CANADIAN MINE. THE COMPETITIONS OFFER AN INEXPENSIVE FORM OF INSURANCE FOR EACH PROVINCE OR TERRITORY, NONE OF WHICH IS CAPABLE OF SUSTAINING A PROLONGED MINE RESCUE OPERATION WITHOUT OUTSIDE HELP.

5. LABOUR UNIONS ARE SUPPORTIVE OF NATIONAL MINE RESCUE COMPETITIONS AND THE CHIEF INSPECTORS OF MINES WOULD LIKE TO HAVE THE CONTINUING SUPPORT OF THE MINISTERS RESPONSIBLE FOR THE SAFETY AND HEALTH OF MINE WORKERS. THEY ALSO SEEK THE FULL COOPERATION OF MINING ASSOCIATIONS.

6. RULES AND PROCEDURES FOR NATIONAL MINE RESCUE COMPETITIONS ARE NOW AVAILABLE IN BOTH OFFICIAL LANGUAGES.

7. TECHNICAL PAPERS, TELEVISION AND PRESS RELEASES WILL BE AVAILABLE THROUGH THE CHIEF INSPECTORS OF MINES.

8. THE CHIEF INSPECTORS STRONGLY RECOMMEND A DECISION BEFORE THE MINES MINISTERS ADJOURN THIS CONFERENCE ON A LOCATION FOR NEXT YEARS' COMPETITION. THIS IS ESSENTIAL TO PROVIDE ADEQUATE TIME FOR PREPERATIONS INCLUDING THE RESERVATION OF MOTEL AND HOTEL ACCOMMODATIONS AND A SUITABLE ARENA.



David L. Brown, 1141 E. 1st St.,
 North Platte, 69101
 Ted L. Brown, 1001
 Mary Wilford
 Brown, 1001
 Rod Brown
 Hon. Koburnski, Co. Ordinance
 Mary Shewhan, Co. Ordinance



Brunswick Minny and Smelt

Perley Power	Captain
Ken Martin	
Leonard McGrath	
Emile Theriault	
Maurice Cormier	
Donald Chasson	Vice Captain
Irvin Wiseman	Co-ordinator
Leonard Lavigne	Coach
Angus Phalen	



Sheldon (Shelly) Gouthro	Captain
Wayne Chasson	
Zeel Doucette	
ke Batten	
Bryan Duhamel	
John MacDonald	Vice Captain
John Baldwin	Co-ordinator
Mike Kelloway	Coach



<p>Ray Patey Captain</p> <p>William Noel</p> <p>Les Wentzell</p> <p>Roger House</p> <p>Ken Perry</p> <p>Almo Taylor</p> <p>Derek Bloom</p> <p>Co-ordinator</p>	<p>Newfoundland Zinc Mines Ltd</p>
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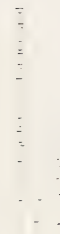
Vice president	Chuck Koc	captain
	Carl Hunt	
	Michael Delany	
	erry Bulz	
	Steve Blahu	
	Dave Sreftian	Vice captain
	Murray John	Co ordinator
	Jack Haynes	Coach



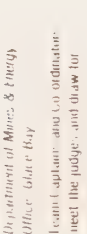
Westair Mining Ltd



Team Alberta
 Sean Brymer Captain
 Dennis Batten
 Ashley Tuzo
 Gerald Phillips
 Paul Andre
 Duncan Gilding
 Bill Napier Co-ordinator
 Brian Hoyle



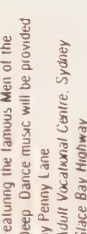
1. The first group of authors (1970-1975) includes the following:



and participating
Nuclear Energy
Development of Mines & Energy
Office, Glace Bay
Team Captain, and Co-ordinator
need the judge, and draw for
position
Miners Forum Glace Bay



Day 1 tasks begin
Bench First Aid Smoke Room
Written Test
Miners Forum



Day 2 tasks begin
live Fighting, Obstacle Course
Miner's Forum
Reception, Banquet and Dance
(by invitation only)
reuniting the famous Men of the
Deep. Dance music will be provided
by Penny Lane
Adult Vocational Centre, Sydney
Place Bay Highway

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COOPERATIVE R & D PROGRAMS DIRECTED TO HEALTH AND

SAFETY IN MINES

THE MINES INSPECTORS IN THEIR RESPONSIBILITY FOR THE HEALTH AND SAFETY OF OUR MINING WORK FORCE WHICH IS SO IMPORTANT TO THE MINING INDUSTRY, STRONGLY ENDORSES THE COMBINED GOVERNMENT THRUST FOR RESEARCH AND DEVELOPMENT IN THE FIELD OF MINING HEALTH AND SAFETY UNDER FEDERAL-PROVINCIAL MINERAL DEVELOPMENT AGREEMENTS. THE ADDITION OF TECHNOLOGY R & D WITHIN THESE EXAMPLES OF JOINT COOPERATION IS MOST WELCOME, AND ITS VALUE IS ENHANCED BY THE INVOLVEMENT OF INDIVIDUAL MINING COMPANIES AND CONTRACTS TO THE PRIVATE SECTOR.

THE MINES INSPECTORS WISH TO ENCOURAGE MINISTERS TO ENSURE THAT THIS EFFORT IS NOT ONLY MAINTAINED BUT CAN BE EXPANDED.

THE FULL SCOPE OF CURRENT PROJECTS IS DETAILED IN THE APPENDED TABLE.

THE FOCUS OF THE MINING AND MINERALS TECHNOLOGY PROGRAM IS THE APPLICATION OF R & D TO SPECIFIC PROBLEMS AND OPPORTUNITIES RELATED TO MINERAL RESOURCES. THE TECHNOLOGY R & D PROJECTS ARE AIMED AT DEVELOPING NEW TECHNOLOGY AND KNOWLEDGE THAT WILL IMPROVE HEALTH AND SAFETY, AS WELL AS INCREASE EFFICIENCY AND PRODUCTIVITY IN THE MINERAL INDUSTRIES OF THE PROVINCES AND TERRITORIES.

TABLE 1 - SUMMARY OF RESOURCES (\$'000's)

September 12, 1985
Page 1

Province	Funding and delivery	Geoscience	Mining and Mineral Technology	Economic Development Studies	Public Information and Evaluation	Total
Newfoundland	Federally funded and delivered	7,950	1,500	1,250	1,600	12,300
	Provincially funded and delivered	1,950	600	250	600	3,400
	Jointly funded Province delivered	6,500	-	-	-	6,500
	Sub-total	16,400	2,100	1,500	2,000	22,000
Nova Scotia	Federally funded and delivered	8,955	3,275	895	1,700	14,825
	Provincially funded and delivered	7,905	1,635	240	1,060	12,120
				* From specific programs		
	Sub-total	16,860	4,910	2,425	2,760	26,935
New Brunswick	Federally funded and delivered	8,500	3,000	2,000	1,500	15,000
	Provincially funded and delivered	3,873	275	2,861	298	7,307
	Sub-total	12,373	3,275	4,861	1,798	22,307
Quebec	Federally funded-Provincially delivered		- Research & Development on Asbestos - Development of Mineral Infrastructure - Quebec Iron Ore Industry			
	Provincially funded and delivered	17,375	4,000	28,500*	125	50,000
		17,375	4,000	28,500*	125	50,000
	Sub-total	34,750	8,000	57,000*	250	100,000
Ontario	Federally funded and delivered	6,550	3,550	200	700 Info exchange program	11,000
	Federally funded Provincially delivered					
	Provincially funded and delivered	2,485	-	905	210 400	4,000
	Sub-total	9,035	-	3,395*	790 1,500	15,000
		18,350	3,550	4,500	1,700 1,900	30,000

* - Major Development Program

TABLE 1 - SUMMARY OF RESOURCES (\$000's)

September 12, 1985
Page 2

Province	Funding and Delivery	Geoscience	Mining and Mineral Technology	Economic Development Studies	Public Information and Evaluation	Total
Manitoba	Federally funded and delivered	8,000	4,665	885	1,250	14,800
	Provincially funded and delivered	5,000	2,765	885	1,250	9,900
	Sub-total	13,000	7,430	1,770	2,500	24,700
Saskatchewan	Federally funded and delivered	2,200	400	400	190	3,190
	Provincially funded and delivered	3,140	-	-	50	3,190
	Sub-total	5,340	400	400	240	6,380
British Columbia		Promotion of British Columbia Mineral Potential		Mine Development		
	Federally funded-Provincially delivered	3,418	-	860*	117	4,375
	Federally funded and delivered	625	-	-	-	625
	Provincially funded and delivered	3,907	-	960*	133	5,000
	Sub-total	7,950	-	1,800	250	10,000
Yukon	**Federally funded-Yukon delivered	2,901	Placer Mining 600	-	-	3,501
	Yukon funded and delivered	389	-	-	-	389
	Sub-total	3,290	600	-	-	3,890
	** Federal share administered through DIAND and EMR TOTALS (percent)	128,313 (52.1)	30,265 (12.3)	74,256 (30.2)	13,378 (5.4)	246,212 (100)

42nd ANNUAL CONFERENCE OF PROVINCIAL
MINISTERS OF MINES42^e CONFÉRENCE ANNUELLE DES MINISTRES
PROVINCIAUX DES MINESCHARLOTTETOWN, P.E.I.
September 17, 1985CHARLOTTETOWN (I-du-P.-É)
Le 17 septembre 1985

LIST OF PUBLIC DOCUMENTS

LISTE DES DOCUMENTS PUBLICS

DOCUMENT NO. N° DU DOCUMENT	SOURCE ORIGINE	TITLE TITRE
✓ 860-158/004	Geological Association of Canada	✓ Presentation Geological Association of Canada
	Association géologique du Canada	Présentation Association géologique du Canada
✓ 860-158/005	Prospectors and Developers Association of Canada	✓ Brief - Prospectors and Developers Association of Canada
	Association des prospecteurs et exploitants du Canada	✓ Mémoire - Association des prospecteurs et exploitants du Canada
✓ 860-158/006	Mining Association of Canada	✓ Brief - The Mining Association of Canada
	Association minière du Canada	✓ Mémoire - L'Association minière du Canada

DOCUMENT NO. N° DU DOCUMENT	SOURCE ORIGINE	TITLE TITRE
860-158/008	Canadian Association of Threatened Single Industry Towns	✓ The Future of Mining Towns in Canada - A Question of Priorities
	La Canadian Association of Threatened Single Industry Towns	✓ L'avenir des villes minières au Canada Une question de priorités
860-158/010	Saskatchewan	✓ Report of the Committee of Provincial Geologists to the Mines Ministers' Meeting - Charlottetown, September 17, 1985
✓ 860-158/011	Ontario	✓ Recommendations of the Chief Inspectors of Mines to the Provincial Mines Ministers
860-158/015	Secretariat	✓ List of Public Documents
	Secrétariat	✓ Liste des documents publics

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DOCUMENT: 860-159/009

CONFERENCE OF PROVINCIAL AND TERRITORIAL
MINISTERS OF SOCIAL SERVICES

Communique

December 5, 1984

Toronto, Ontario
December 4 and 5, 1984

December 5, 1984

MINISTERS OF SOCIAL SERVICES MET IN TORONTO

Ministers responsible for Social Services from the ten provinces and the two territories met in Toronto to discuss issues of common concern.

Provincial and territorial Ministers welcomed and emphasized the renewed spirit of Federal-Provincial cooperation in addressing questions of importance to all Canadians. Among the specific items discussed were ways in which this cooperation could be improved.

Ministers expressed their views on the future directions of social programs. They agreed that the Canada Assistance Plan remains a viable legislative vehicle for cost-sharing social service and assistance programs. This cost-sharing mechanism has historically helped the provinces and territories to establish and deliver a broad range of social programs within the framework of their respective responsibilities.

The Ministers emphasized that the administration of the Canada Assistance Plan must be strengthened and improved to ensure flexibility in response to changing social needs.

Ministers agreed that greater emphasis be placed on offering employment and training alternatives to social assistance recipients to enhance self-reliance. These measures should complement other employment support programs provided by governments.

Ministers expressed their grave concern about family violence and child abuse. They recognized that this issue involves the community; a range of professions; and, several government departments. As part of their response, Ministers agreed that they would meet at an early date for an exchange of information as an additional step in developing an appropriate coordinated approach. Another agenda item included establishing a process for renewing the Vocational Rehabilitation for Disabled Persons agreements.

Provincial and territorial ministers had an opportunity to meet informally with the Honourable Jake Epp, Minister of National Health and Welfare and identified priorities to be addressed at a joint federal-provincial Ministers' meeting to be held early in the new year.

The host and Chairman of the Conference, the Honourable Frank Drea, Minister of Community and Social Services for Ontario said: "I am pleased with the discussions that have taken place and I believe that a constructive and beneficial forum has been established."

MINISTER / MINISTRES

PROVINCE

The Honourable Frank Drea
Minister of Community and Social Services

ONTARIO

Madame Pauline Marois
Ministre de la Main-d'oeuvre et de la
sécurité du revenu

QUEBEC

Honourable Edmund L. Morris
Minister of Social Services

NOVA SCOTIA/
NOUVELLE ECOSSE

Honourable Nancy Clark Teed
Minister of Social Services

NEW BRUNSWICK/
NOUVEAU-BRUNSWICK

Honourable Muriel Ann Smith
Minister of Community Services

MANITOBA

Honourable Grace McCarthy
Minister of Human Resources

BRITISH COLUMBIA/
COLOMBIE-BRITANNIQUE

Honourable Albert P. Fogarty
Minister of Health and Social Services

PRINCE EDWARD ISLAND/
ILE-DU-PRINCE-EDOUARD

Honourable Gordon Dirks
Minister of Social Services

SASKATCHEWAN

Honourable Neil Webber
Minister of Social Services and
Community Health

ALBERTA

Honourable Thomas Hickey
Minister of Social Services

NEWFOUNDLAND/
TERRE-NEUVE

Honourable Andy Philipsen
Minister of Health and Human Resources

YUKON

Honourable Bruce McLaughlin
Minister of Social Services

NORTHWEST
TERRITORIES /
TERRITOIRES DU
NORD-OUEST

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DOCUMENT: 860-159/009

Traduction du Secrétariat

CONFERENCE PROVINCIALE ET TERRITORIALE DES
MINISTRES DES SERVICES SOCIAUX

Communiqué

le 5 décembre 1984

Toronto (Ontario)
Les 4 et 5 décembre 1984

REUNION DES MINISTRES DES SERVICES SOCIAUX A TORONTO

Les ministres responsables des services sociaux des dix provinces et des deux territoires se sont réunis à Toronto afin de discuter de préoccupations communes.

Ils ont manifesté leur satisfaction à l'égard du nouvel esprit de collaboration fédérale-provinciale dans lequel sont abordées les questions importantes pour les Canadiens. Les moyens d'améliorer cette collaboration furent un des points précis sur lesquels les discussions ont porté.

Les ministres ont donné leur avis sur l'orientation future des programmes sociaux. Ils ont convenu que le Régime d'assistance publique du Canada demeure un instrument législatif valable pour le partage des frais des programmes de services sociaux et d'assistance. Ce mécanisme de partage de frais a traditionnellement aidé les provinces et les territoires à établir et à offrir une variété de programmes sociaux dans le cadre de leurs responsabilités respectives.

Les ministres ont souligné que l'administration du Régime d'assistance publique du Canada doit être renforcée et améliorée afin de laisser plus de souplesse pour répondre aux besoins sociaux changeants.

Les ministres ont convenu qu'il faut s'efforcer d'offrir davantage de possibilités d'emploi et de formation aux bénéficiaires d'assistance sociale afin de favoriser leur autonomie. Ces mesures doivent compléter d'autres programmes d'aide à l'emploi mis en oeuvre par les gouvernements.

Les ministres se sont dits profondément préoccupés par la violence au sein de la famille et les abus dont sont victimes les enfants. Ils ont reconnu que ce problème concerne à la fois la collectivité, diverses professions et plusieurs ministères. Une des mesures additionnelles sur laquelle les ministres se sont entendus pour mettre au point une intervention coordonnée convenable consiste à se réunir prochainement pour échanger des renseignements. La question de l'établissement d'un processus de renouvellement des accords sur la réadaptation professionnelle des invalides figurait également à l'ordre du jour.

Les ministres provinciaux et territoriaux ont eu l'occasion de rencontrer de façon informelle l'honorable Jake Epp, ministre de Santé et Bien-être social Canada. Ils ont alors défini les points à étudier en priorité à une conférence des ministres fédéral et provinciaux qui aura lieu au début de la prochaine année.

En sa qualité d'hôte et de président de la conférence, l'honorable Frank Drea, ministre des Services sociaux et communautaires de l'Ontario, a fait la déclaration suivante: "Je suis heureux des discussions qui ont eu lieu et je crois que nous avons mis en place un carrefour constructif et profitable."

MINISTER / MINISTRES

PROVINCE

The Honourable Frank Drea
Minister of Community and Social Services

ONTARIO

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Ministre de la Main-d'oeuvre et de la
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Minister of Health and Human Resources

YUKON

Honourable Bruce McLaughlin
Minister of Social Services

NORTHWEST
TERRITORIES /
TERRITOIRES DU
NORD-OUEST

CONFERENCE OF PROVINCIAL AND TERRITORIAL
MINISTERS OF SOCIAL SERVICESCONFERENCE PROVINCIALE ET TERRITORIALE DES
MINISTRES DES SERVICES SOCIAUX

TORONTO

December 4-5, 1984

Les 4 et 5 décembre 1984

LIST OF PUBLIC DOCUMENTS

LISTE DES DOCUMENTS PUBLICS

DOCUMENT NO. N° DU DOCUMENT	SOURCE ORIGINE	TITLE TITRE
860-159/009	Conference	✓ Communiqué December 5, 1984
	Conférence	✓ Communiqué le 5 décembre 1984



INTERPROVINCIAL CONFERENCE OF
MINISTERS RESPONSIBLE FOR
SPORT AND RECREATION

Communique

September 10, 1985

Calgary, Alberta
September 9 and 10, 1985

The Ministers considered that the Government of the United Kingdom should be invited to consider the possibility of providing financial assistance to the Government of the United Kingdom for the purpose of improving the living conditions of the people of the United Kingdom.

...to
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COMMUNIQUE

CALGARY, September 10, 1985 - The provincial and territorial Ministers of Sport and Recreation at their annual conference, have agreed that recreation can play a role in reducing overall health care costs in Canada, that greater participation of the private sector is needed in the sponsorship of amateur sport and that more emphasis should be placed on developing coordinated strategies to help Canadians learn how to better utilize their leisure time.

The ministers concurred that the significant recreation related concerns facing all governments in the immediate future revolve around the issues of improving lifestyle opportunities for Canadians, the increasing requests for funding from governments and the need for improved programs relating to the use of leisure time.

While the definition of health has traditionally been rather narrowly defined as the "absence of disease", the majority of illness is directly linked to environmental and lifestyle causes.

It is in the area of enhanced lifestyles through improved recreational services that the ministers felt recreation could contribute to reducing health care costs.

Rising costs were discussed in relation to increasing demands for funding from sports organizations and the expectation that such demands will continue to increase.

While agreeing that governments have significantly contributed to amateur sport development throughout Canada, the ministers also recognized that additional government funding is limited due to existing economic constraints. They agreed, therefore, to encourage and support greater commercial sponsorship of amateur sport in Canada.

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They stated: "A more equitable funding partnership between governments and the corporate sector is necessary to assist in the development of amateur sport, thus ensuring a high quality of sport programming."

The ministers reviewed the physical activity patterns of adult Canadians, and recognized that up to 65 per cent of the population remains relatively inactive and that regular physical participation generates greater productivity, reduces absenteeism from the workplace, lowers medical costs and generates economic spin-offs. They also concurred they would investigate the feasibility of developing a comprehensive leisure awareness program.

The future of the Canada Games was seriously addressed. In addition they expressed the need for a continuing commitment by the federal government to maintain their financial support for the Games.

The Canada Games are viewed by all ministers as being extremely important for the development of amateur sport in Canada. They will be requesting the federal minister, the Hon. Otto Jelinek, in a federal/provincial meeting scheduled for tomorrow, to confirm the federal government's commitment.

As well, the ministers reaffirmed their position to discuss changes with the Canadian Olympic Association in the selection criteria of athletes to ensure that Canada is fully represented.

The funding and organization of national and international events for the disabled, domestic sport development aimed at improving and expanding the local level of participation, high performance training centers, preparation for a fitness summit and the need for a national recreation statement included other items discussed.

The 1986 conference will be hosted by Prince Edward Island.

CONFERENCE INTERPROVINCIALE DES MINISTRES
CHARGES DU SPORT ET DES LOISIRS

Communiqué

Le 10 septembre 1985

Calgary (Alberta)
Les 9 et 10 septembre 1985

COMMUNIQUÉ

CALGARY, le 10 septembre 1985 - À leur conférence annuelle, les ministres provinciaux et territoriaux responsables du sport et des loisirs ont constaté que les loisirs pouvaient contribuer à faire baisser l'ensemble des frais médicaux au Canada. Ils ont également convenu qu'une plus grande participation du secteur privé s'avérerait nécessaire pour le développement du sport amateur. De plus, les ministres ont discuté de l'importance de coordonner leurs stratégies afin de permettre aux Canadiens de mieux utiliser leurs temps libres.

Les ministres s'accordent à dire que les principales questions auxquelles feront face tous les gouvernements en matière de loisirs dans l'avenir immédiat porteront sur l'amélioration de la qualité de vie des Canadiens, l'augmentation des coûts dus à l'accroissement des demandes de subventions des organismes sportifs et la nécessité de mettre en place de meilleurs programmes en matière de loisirs.

Bien que la santé soit définie traditionnellement de façon assez restreinte comme étant «l'absence de maladie», la plupart de celles-ci sont directement reliées à des causes environnementales et de modes de vie. En effet, les recherches dans le domaine démontrent que le taux d'alcoolisme et de suicides a doublé au Canada depuis environ 30 ans, et celui des admissions dans les hôpitaux psychiatriques a triplé entre 1955 et 1976.

Les ministres ont donc jugé que de meilleurs services récréatifs contribueraient à améliorer la qualité de vie des Canadiens et diminueraient ainsi les frais médicaux.

Tout en convenant du rôle important que les gouvernements jouent dans le développement du sport amateur au Canada, les ministres reconnaissent que les fonds gouvernementaux sont limités en raison de la conjoncture économique actuelle. Ils s'engagent par conséquent à encourager et à appuyer une plus grande participation du secteur privé dans le sport amateur au Canada.

Ils ont déclaré: «Une association financière plus équitable entre les gouvernements et les entreprises privées est nécessaire afin d'encourager le développement du sport amateur et d'assurer ainsi la mise en place de programmes sportifs de meilleure qualité.»

Les ministres ont reconnu que jusqu'à 65 p. cent de la population canadienne demeurerait relativement inactive, alors qu'une participation régulière à l'activité physique accroît la productivité, réduit le taux d'absentéisme au travail, diminue les frais médicaux et entraîne des retombées économiques. Ils se sont entendus également pour étudier la possibilité d'élaborer un programme complet de sensibilisation aux loisirs.

Ils ont examiné sérieusement l'avenir des Jeux du Canada et ont exprimé la nécessité que le gouvernement fédéral maintienne le même appui financier aux Jeux.

L'ensemble des ministres considère que les Jeux du Canada jouent un rôle de première importance dans le développement du sport amateur au Canada. Ils demanderont à l'honorable Otto Jelinek, au cours de la conférence fédérale-provinciale prévue pour demain, de confirmer l'engagement du gouvernement fédéral à cet égard.

En outre, les ministres ont réaffirmé leur décision de discuter avec l'Association olympique canadienne des changements concernant les critères de sélection des athlètes afin d'assurer la pleine participation du Canada.

Enfin, parmi les autres sujets discutés, notons le financement et l'organisation des compétitions nationales et internationales pour les athlètes handicapés, le développement sportif de base dans le but d'améliorer la participation au niveau local, les centres d'entraînement de haute performance, la préparation d'un sommet sur la condition physique ainsi que l'élaboration d'une déclaration nationale sur les loisirs.

L'Île-du-Prince-Édouard recevra la prochaine conférence inter-provinciale en 1986.

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DOCUMENT: 860-161/027

INTERPROVINCIAL CONFERENCE OF MINISTERS RESPONSIBLE
FOR SPORT AND RECREATION

CONFÉRENCE INTERPROVINCIALE DES MINISTRES RESPONSABLES
DU SPORT ET DES LOISIRS

CALGARY, Alberta
September 9-10, 1985

CALGARY (Alberta)
Le 9 et 10 septembre 1985

LIST OF PUBLIC DOCUMENTS

LISTE DES DOCUMENTS PUBLICS

DOCUMENT NO. DOCUMENT	SOURCE ORIGINE	TITLE TITRE
-161/025		Communique Communiqué

01
4
68
DOCUMENT: 860-163/019

INTERPROVINCIAL CONFERENCE OF MINISTERS OF MUNICIPAL AFFAIRS

Press Release

SASKATOON, Saskatchewan
August 13 - 16, 1985

For Release: Friday, August 16
11:30 a.m.

Official Communiqué

The annual conference of the Municipal Affairs Ministers took place in Saskatoon, Saskatchewan from August 13 to 16.

The ministers meet each year to exchange views on issues of mutual interest related to municipal matters.

The conference was co-chaired by Urban Affairs Minister Tim Embury and Rural Development Minister Louis Domotor of Saskatchewan.

Among the items reviewed were:

- policing costs and funding methods,
- regional economic development initiatives, and,
- municipal infrastructure needs and funding options.

With respect to the issue of funding municipal infrastructure needs, the ministers noted that the provincial and territorial governments currently play a major role in assisting municipal governments in financing capital projects. While the

provincial/territorial and federal governments face on-going pressures to manage their deficits, there is a growing need to address the long-term capital requirements of municipalities which includes both deficiencies in current facilities and the need to expand service levels where appropriate.

A majority of the conference participants agreed to approach the federal government this fall to present their evaluation of present and future municipal infrastructure requirements and to seek the views of the federal government on how to solve jointly this ongoing problem.

The conference participants also exchanged views on provincial and municipal initiatives to encourage economic development and job creation.

DOCUMENT: 860-163/019

CONFERENCE INTERPROVINCIALE DES MINISTRES DES AFFAIRES MUNICIPALES

Communiqué

SASKATOON (Saskatchewan)
Du 13 au 16 août 1985

Communiqué de presse à publier le
vendredi 16 août 1985 à 11 h 30

Communiqué officiel

La conférence annuelle des ministres des Affaires municipales a eu lieu à Saskatoon, en Saskatchewan, du 13 au 16 août.

Les ministres se réunissent chaque année afin de discuter de questions se rapportant aux affaires municipales et pour lesquelles ils ont un intérêt commun.

Parmi les questions étudiées, citons:

- le coût des services de police et les moyens de les financer,
- les mesures favorisant le développement économique régional,
- les besoins des municipalités sur le plan des infrastructures et les moyens d'en financer la mise en place.

En ce qui concerne les besoins des municipalités sur le plan des infrastructures et des moyens d'en financer la mise en place, les ministres reconnaissent que les gouvernements provinciaux et territoriaux jouent actuellement un rôle primordial dans le financement de projets d'équipement réalisés par les municipalités.

Bien que le gouvernement fédéral et celui des provinces et des territoires doivent déployer des efforts afin de contrôler leur déficit respectif, des besoins de plus en plus pressants se font sentir en matière d'immobilisations municipales afin de répondre au manque d'installations que l'on connaît actuellement et d'augmenter les services.

Les participants à la conférence ont également discuté des mesures provinciales et municipales à prendre pour encourager le développement économique et la création d'emplois.

DOCUMENT: 860-163/021

INTERPROVINCIAL CONFERENCE OF MINISTERS OF MUNICIPAL AFFAIRS

CONFÉRENCE INTERPROVINCIALE DES MINISTRES DES AFFAIRES MUNICIPALES

SASKATOON, Saskatchewan
August 13-16, 1985

SASKATOON (Saskatchewan)
Du 13 au 16 août 1985

LIST OF PUBLIC DOCUMENTS

LISTE DES DOCUMENTS PUBLICS

DOCUMENT NO. DU DOCUMENT	SOURCE ORIGINE	TITLE TITRE
860-163/019		Press Release - Official Communiqué Communiqué - Communiqué Officiel

PROVINCIAL-TERRITORIAL CONFERENCE OF
MINISTERS OF HEALTH

News Release

Report of Task Force on Kidney Donation Released

Ontario

TORONTO, Ontario
September 25 - 26, 1985



news release / communiqué

Ministry
of
Health

Ministère
de la
Santé

85/nr-212
Contact: Arlene Greer, Toronto
Communications and
Information Branch
Phone: (416) 965-5167

REPORT OF TASK FORCE ON KIDNEY DONATION RELEASED

TORONTO, September 25 -- The development of programs to educate health care providers and the public about the importance of kidney transplants is a key recommendation in the report of the Task Force on Kidney Donation, released today by Health Minister Murray Elston.

"The report contains a number of very positive recommendations which point the way to increasing kidney donations in Ontario," Mr. Elston said. "Implementation of the recommendations will mean that many kidney patients who now must undergo dialysis can receive the transplants they need to live more normal and healthy lives.

"Patients on hemodialysis, for example, must be hooked up to dialysis machinery two to three times a week, a time-consuming procedure which interrupts daily life."

The ministry's commitment to increasing the number of transplants will not only improve quality of life, but will also reduce long-term costs to the health care system. It is estimated the ministry now spends \$40,000 annually for each patient on dialysis.

Approximately 400 Ontario patients a year need new kidneys, but only about half this number are currently donated.

The 16-member task force, co-chaired by Dr. Calvin Stiller, chief of the Multiorgan Transplant Service at London's University Hospital, and Dr. Michael Robinette, a transplant surgeon at Toronto General Hospital, was appointed in 1983 to identify barriers to kidney donation and ways to increase donations. These issues were discussed last December at a ministry-sponsored symposium here, and were reviewed by an international panel of experts.

Among the recommendations in the report released today are that:

- . Acute-care hospitals develop policies and procedures to facilitate organ donations. At present, less than half of Ontario's hospitals actively promote donation.
- . Hospitals consider establishing organ donation committees which would be responsible for implementing policies and procedures.

- . A public awareness campaign be conducted to educate the public about the need for organ donors and the success of transplants. A study conducted in Ontario in early 1984 revealed that about 72 per cent of those surveyed had not signed the donor consent form on their drivers' licence.
- . Health care providers be given in-service training to familiarize them with the organ donation process and to improve their ability to identify suitable potential donors.
- . Health care professional organizations be encouraged to include information about transplants in their continuing education programs, and faculties of medicine be asked to include instruction in their curricula concerning the physician's role in the organ donation process.
- . Information be developed for relatives of kidney patients who may be willing to donate a kidney.
- . Hospital chaplaincy and social work services be included along with medical and nursing staff as integral participants in the donation process, with particular responsibility for ministering to the needs of the donor and the donor's family.

A co-ordinating group, chaired by Randy Reid, assistant deputy minister, Institutional Health, will implement many of these recommendations and assess their effectiveness in increasing kidney donations, Mr. Elston said.

He added that he would share the contents of the report later today with his fellow ministers attending the Provincial-Territorial Conference of Ministers of Health. Drs. Stiller and Robinette will also make a brief presentation on the report to the conference.

Copies of the report are available on request.

CONFÉRENCE PROVINCIALE-TERRITORIALE DES
MINISTRES DE LA SANTÉ

Communiqué

Publication du rapport du groupe d'étude sur le don de reins

Ontario

TORONTO (Ontario)
Les 25 et 26 septembre 1985



news release / communiqué

Ministry
of
Health

Ministère
de la
Santé

Renseignements : Susan Christie, Toronto
Direction des communications
et de l'information
N° de téléphone: (416) 965-5167

PUBLICATION DU RAPPORT DU GROUPE D'ÉTUDE SUR LE DON DE REINS

TORONTO, le 25 septembre -- L'élaboration de programmes visant à sensibiliser les spécialistes de la santé et la population à l'importance des transplantations rénales est l'une des principales recommandations du rapport du groupe d'étude sur le don de reins, rendu public aujourd'hui par le ministre de la Santé, M. Murray Elston.

"Le rapport renferme un certain nombre de recommandations très positives qui ont pour objet d'accroître les dons de reins en Ontario, a déclaré M. Elston. La mise en oeuvre de ces recommandations permettra aux nombreux malades qui doivent actuellement avoir recours à la dialyse de se voir greffer l'organe dont ils ont besoin pour mener une vie plus normale et plus saine.

"Les malades soumis à l'hémodialyse, par exemple, doivent être reliés à une machine deux ou trois fois par semaine, procédé qui demande beaucoup de temps et perturbe les activités courantes."

L'engagement qu'a pris le ministère d'augmenter le nombre de transplantations non seulement améliorera la qualité de la vie de ces personnes, mais il réduira les frais à long terme auxquels le système de santé doit faire face. On estime que le ministère dépense actuellement 40 000 \$ par an pour chaque malade soumis à la dialyse.

Chaque année, quelque 400 Ontariens ont besoin d'une greffe de rein, mais la moitié d'entre eux seulement peuvent bénéficier d'un don l'organe.

Le groupe d'étude, composé de 16 membres et présidé par le docteur Calvin Stiller, chef du service de transplantation d'organes au University Hospital de London, et le docteur Michael Robinette, chirurgien spécialisé dans les greffes au Toronto General Hospital, a été mis sur pied en 1983 dans le but de déterminer les obstacles aux dons de reins et de recommander des façons d'accroître le nombre de dons. Ces questions ont été étudiées en décembre dernier lors d'un colloque organisé sous les auspices du ministère et tenu à Toronto, et elles ont été réexaminées par un groupe international d'experts.

Parmi les recommandations contenues dans le rapport publié aujourd'hui, mentionnons ce qui suit :

- . Que les hôpitaux pour malades aigus élaborent des politiques et des procédés visant à faciliter le don d'organes. À l'heure actuelle, moins de la moitié des hôpitaux ontariens encouragent activement ces dons.
- . Que les hôpitaux songent à former des comités de dons d'organes qui seraient chargés de mettre en oeuvre les politiques et les procédés établis.
- . Qu'une campagne de sensibilisation soit menée afin d'informer la population des besoins en matière de dons d'organes et du succès des transplantations. Une étude effectuée en Ontario au début de l'année 1984 a révélé qu'environ 72 pour cent des personnes interrogées n'avaient pas signé la formule de consentement au don d'organes jointe à leur permis de conduire.
- . Qu'une formation en cours d'emploi soit dispensée aux responsables de services de santé pour les familiariser avec le processus de don d'organes et les rendre plus aptes à identifier les donneurs convenables.

- . Que l'on encourage les organismes professionnels qui oeuvrent dans le domaine de la santé à incorporer à leurs programmes d'éducation permanente des cours d'information sur les greffes d'organes, et que l'on demande aux facultés de médecine d'ajouter à leur programme d'études des cours sur le rôle du médecin dans le processus de don d'organes.
- . Que du matériel d'information soit préparé à l'intention des familles des personnes souffrant d'insuffisance rénale, dont certains membres pourraient être disposés à faire don d'un rein.
- . Que l'aumônier et les services sociaux des hôpitaux se joignent aux médecins et au personnel infirmier pour faire partie intégrante du processus de don d'organes, et qu'ils veillent en particulier à subvenir aux besoins du donneur et de sa famille.

Un groupe de coordination, ayant à sa tête M. Randy Reid, sous-ministre adjoint responsable des établissements de soins, verra à la mise en oeuvre de bon nombre de ces recommandations et évaluera leur efficacité pour ce qui est d'accroître le nombre de dons de reins, a déclaré M. Elston.

Le ministre a ajouté qu'il ferait part du contenu du rapport, au cours de la journée, à ses homologues qui assistent à la conférence des ministres de la Santé des provinces et des territoires. Les docteurs Stiller et Robinette doivent également présenter à cette occasion un bref exposé sur le rapport.

On peut se procurer sur demande des exemplaires du rapport.

PROVINCIAL-TERRITORIAL CONFERENCE OF
MINISTERS OF HEALTH

Remarks by
the Honourable Murray Elston
Minister of Health

Ontario

TORONTO, Ontario
September 25 - 26, 1985



REMARKS BY

THE HONOURABLE MURRAY ELSTON

MINISTER OF HEALTH

TO THE

PROVINCIAL/TERRITORIAL CONFERENCE

OF MINISTERS OF HEALTH

TORONTO, ONTARIO

SEPTEMBER 25, 1985

CHECK AGAINST DELIVERY

ON BEHALF OF THE PROVINCE OF ONTARIO, OUR PREMIER THE HONOURABLE DAVID PETERSON, AND MYSELF, I WANT TO WELCOME EACH AND EVERY ONE OF YOU TO THIS CONFERENCE OF MINISTERS OF HEALTH.

DURING OUR TIME TOGETHER, WE WILL BE DEALING WITH A VARIETY OF MATTERS WHICH, OVER THE NEXT DECADE, COULD HAVE A PROFOUND EFFECT ON THE HEALTH LEVELS OF CANADIANS AND ON THE FUNCTIONING OF OUR HEALTH CARE SYSTEMS.

CONCERNING OUR AGENDA THIS AFTERNOON, WE WILL BE LOOKING AT THREE IMPORTANT HEALTH CARE ISSUES -- ISSUES ABOUT WHICH I AM EAGER TO HEAR YOUR VIEWS AND OPINIONS AND ON WHICH I WOULD HOPE WE MIGHT FIND NEW VENUES FOR INTER-PROVINCIAL CO-OPERATION.

SASKATCHEWAN WILL BEGIN BY BRINGING FORWARD A DISCUSSION ABOUT ACQUIRED IMMUNE DEFICIENCY SYNDROME.

THE GROWING INCIDENCE OF AIDS HAS BECOME A MATTER OF NATIONAL AND INTERNATIONAL CONCERN. INDEED, IT MAY WELL TURN OUT TO BE THE MAJOR PUBLIC HEALTH ISSUE THAT WE WILL HAVE TO GRAPPLE WITH OVER THE NEXT SEVERAL YEARS.

TO DATE, THERE HAVE BEEN 309 CASES DIAGNOSED IN THIS COUNTRY -- 156 VICTIMS OF THIS ILLNESS ARE NOW DEAD AND 153 REMAIN ALIVE.

FURTHER, THE NUMBER OF CASES BEING REPORTED IS DOUBLING EVERY SEVEN AND ONE HALF MONTHS. IT IS NOW BEING PREDICTED, THAT IF THE CURRENT TREND IN DIAGNOSIS CONTINUES, THERE COULD BE 20,000 AIDS CASES IN THIS COUNTRY BY 1990.

IN OUR OWN PROVINCE, FOR EXAMPLE, IN 1982, FIVE CASES WERE DIAGNOSED; IN 1983, THERE WERE 13 CASES; IN 1984 -- 45 CASES; AND THIS YEAR, 68 NEW CASES HAVE SO FAR BEEN DISCOVERED.

THE PROVINCES HAVE TAKEN JOINT ACTION AGAINST THE SPREAD OF THIS DISEASE BY PROVIDING FUNDS FOR THE CANADIAN RED CROSS SCREENING AND BLOOD TESTING PROGRAM. THE VOLUNTARY BLOOD DONATION PROGRAM THAT EXISTS IN THIS COUNTRY IS ONE THAT IS HIGHLY PRIZED AND VALUED BY ALL CANADIANS. THIS JOINT PROVINCIAL FUNDING ARRANGEMENT WILL ENSURE THAT THE PUBLIC'S CONFIDENCE IN IT CONTINUES.

I WILL BE INTERESTED TO HEAR YOUR IDEAS ABOUT OTHER INITIATIVES THAT MIGHT BE EXPLORED. IN PARTICULAR, HOW WE MIGHT DEVELOP BETTER INFORMATION SHARING AMONG THE PROVINCES, HOW WE MIGHT RESPOND TO THE LEGAL ISSUES OF PATIENT CONFIDENTIALITY AND DISCRIMINATION THAT ARE NOW BEGINNING TO SURFACE, AND WHETHER JOINT FEDERAL-PROVINCIAL FUNDING PROGRAMS MIGHT BE ESTABLISHED FOR A MORE CONCERTED RESEARCH EFFORT AND A PUBLIC EDUCATION CAMPAIGN.

I THINK WE MIGHT ALSO EXAMINE THE QUESTION OF MAKING THE DISEASE REPORTABLE IN ALL PROVINCES SO THAT OUR DATA BASE AND OUR STATISTICS ON THE DISEASE ARE IMPROVED. THERE IS ALSO THE MATTER OF CONTINUING OUR FUNDING COMMITMENT TO THE CANADIAN RED CROSS SOCIETY TO ENSURE THE QUALITY OF THE CANADIAN BLOOD SUPPLY.

A SECOND ITEM ON TODAY'S AGENDA CONCERNS ORGAN TRANSPLANTATION AND WE WILL HAVE REPORTS FROM THE FEDERAL/PROVINCIAL WORKING GROUP ON VITAL ORGAN TRANSPLANT CENTRES AS WELL AS THE ONTARIO TASK FORCE ON KIDNEY DONATION.

AS YOU ARE WELL AWARE, KIDNEY TRANSPLANTS ARE NOW CONSIDERED THE TREATMENT OF CHOICE FOR END STAGE RENAL DISEASE. HEART, LIVER AND HEART-LUNG TRANSPLANTS ARE NOW BECOMING ACCEPTABLE FORMS OF TREATMENT IN SELECTED CASES. IN TERMS OF COST BENEFIT, TRANSPLANTATION APPEARS AS JUSTIFIABLE AS OTHER CONVENTIONAL LIFE-SAVING PROCEDURES. AND IN RECENT YEARS, THE NEW DRUGS THAT PREVENT REJECTION OF THE DONOR-ORGAN HAVE INCREASED DRAMATICALLY OUR SUCCESS RATE WITH THESE THERAPIES.

I WOULD LIKE US TO CONSIDER THE RECOMMENDATIONS AND PROPOSALS OF BOTH REPORTS VERY CAREFULLY.

I BELIEVE, WE HAVE A RESPONSIBILITY TO BRING ABOUT CHANGE IN PROVINCIAL LEGISLATION AND POLICIES TO PROMOTE ORGAN DONATION AND TRANSPLANT. ISSUES RELATING TO FINANCING AND PUBLIC EDUCATION AND AWARENESS ARE ALSO VITALLY IMPORTANT. IT'S MY HOPE THAT WE MIGHT BEGIN ESTABLISHING SOME PROTOCOLS AND MECHANISMS FOR GREATER INTER-PROVINCIAL CO-OPERATION ON MEASURES THAT WILL PROMOTE THE DEVELOPMENT OF MORE ACTIVE ORGAN TRANSPLANTATION PROGRAMS IN CANADA.

ANOTHER ITEM OF BUSINESS THAT WARRANTS OUR CLOSE ATTENTION AND SCRUTINY IS THE EASTMAN REPORT AND THE ISSUE OF DRUG PRICING.

THE EASTMAN REPORT COULD HAVE A MAJOR IMPACT ON HEALTH CARE SYSTEMS ACROSS CANADA AND ITS RECOMMENDATIONS, IF IMPLEMENTED, COULD AFFECT CONSUMER PRICES, PROVINCIAL EXPENDITURES AS WELL AS DEVELOPMENT AND EMPLOYMENT OPPORTUNITIES WITHIN THE PRESCRIPTION DRUG INDUSTRY.

HERE IN ONTARIO, FOR EXAMPLE, UNDER OUR ONTARIO DRUG BENEFIT PLAN -- AND THIS DOES NOT INCLUDE PRIVATE DRUG PLANS OR PEOPLE PURCHASING THEIR OWN MEDICATION -- LAST YEAR, WE SPENT \$350 MILLION ON PRESCRIPTION DRUG PURCHASES. THE EASTMAN REPORT'S PROPOSALS CONCERNING CHANGES TO THE PATENT ACT COULD INCREASE THE COSTS OF OPERATING THIS PROGRAM BY APPROXIMATELY \$4 MILLION ANNUALLY. IF ONE CONSIDERS OTHER PROPOSALS AND RECOMMENDATIONS, THESE COSTS COULD BE CONSIDERABLY HIGHER.

I AM CONFIDENT THAT ALL OF US WILL AGREE WITH THE INTENTIONS OF THE EASTMAN REPORT. WE WOULD AGREE THAT STEPS SHOULD BE TAKEN TO GIVE MORE PROTECTION TO THE CANADIAN CONSUMER AND TO INCREASE CONSUMER KNOWLEDGE AND UNDERSTANDING ABOUT PRESCRIPTION DRUGS.

WE WOULD ALSO AGREE THAT THE EXPANSION OF RESEARCH AND DEVELOPMENT AND THE CREATION OF MORE JOBS WITHIN THE PHARMACEUTICAL INDUSTRY WOULD BE POSITIVE AND BENEFICIAL TO THE COUNTRY.

IT'S MY OPINION THAT THE EASTMAN RECOMMENDATIONS MUST BE CAREFULLY EXAMINED AND DISCUSSED BY THE PROVINCES TO SEE IF THE RECOMMENDATIONS ARE, INDEED, GOING TO HELP US ACHIEVE WHAT WE WANT TO ACHIEVE. I ALSO BELIEVE THE FEDERAL GOVERNMENT MUST GIVE THE PROVINCES ADEQUATE TIME TO STUDY THE MATTERS THAT ARE RAISED BY THE REPORT AND NOT ACT UNTIL THE PROVINCES HAVE BEEN ABLE TO TABLE THEIR CONCERNS AND PRIORITIES.

ON THE MATTER OF DRUG PRICING, YOU MAY BE AWARE THAT IT IS MY INTENTION TO INTRODUCE LEGISLATION, THIS FALL, THAT WILL ENSURE REALISTIC DRUG PRICES IN THIS PROVINCE FOR BOTH THE ONTARIO DRUG BENEFIT PLAN AND CASH PAYING CUSTOMERS.

FOR TOO LONG, A SITUATION HAD BEEN ALLOWED TO DEVELOP IN ONTARIO, WHEREBY THE PRICES QUOTED IN OUR ONTARIO DRUG BENEFIT FORMULARY -- THE FORMULARY ACCORDING TO WHICH PHARMACISTS ARE REIMBURSED UNDER OUR DRUG BENEFIT PROGRAM -- WERE FAR HIGHER THAN THE AMOUNTS MOST PHARMACISTS WERE ACTUALLY PAYING FOR DRUGS.

DURING OUR INVESTIGATION OF THIS ISSUE, OUR MINISTRY PEOPLE CONTACTED COLLEAGUES IN OTHER PROVINCIAL MINISTRIES OF HEALTH. THEY RECEIVED FULL AND OPEN CO-OPERATION ABOUT DIFFERENT PROVINCIAL PRACTICES WITH REGARD TO DRUG PLAN REIMBURSEMENTS AND ABOUT THE MARKET INFORMATION THAT WAS AVAILABLE TO YOU.

IT WAS WITH YOUR CO-OPERATION THAT WE WERE ABLE TO DEVELOP OUR ONTARIO RESPONSE AND I WANT TO THANK YOU FOR YOUR HELP AND SUPPORT IN PROVIDING US WITH THE REQUIRED INFORMATION.

AS WE BEGIN TO WORK ON TODAY'S AGENDA -- AND TOMORROW WHEN WE CONSIDER ISSUES IN COST MANAGEMENT, MEDICAL MANPOWER, MAGNETIC RESONANCE IMAGING, AND PESTICIDES -- I HOPE OUR DISCUSSIONS WILL BE A GENUINE OPPORTUNITY FOR DELIBERATION AND NEGOTIATION.

ALL OF THE AGENDA ITEMS HAVE POTENTIAL FOR CREATING A MAJOR IMPACT ON THE OPERATION OF OUR HEALTH CARE SYSTEMS. IN THESE DISCUSSIONS, WE HAVE A CHANCE TO LEARN FROM EACH OTHER AND TO BENEFIT FROM THE EXPERIENCES OF OUR COLLEAGUES.

LET'S STATE OUR POSITIONS WITH FRANKNESS AND CANDOR.
LET'S COME TO TERMS WITH THE QUESTIONS BEFORE US. AND
LET'S SEEK OUT A CO-OPERATIVE SPIRIT IN WHICH WE MIGHT
BEGIN FINDING SOME ANSWERS.

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DOCUMENT : 860-165/018

Traduction du Secrétariat

CONFÉRENCE PROVINCIALE-TERRITORIALE DES MINISTRES DE LA SANTÉ

Allocution de
l'honorable Murray Elston
Ministre de la Santé



Ontario

TORONTO (Ontario)

Les 25 et 26 septembre 1985

ALLOCUTION DE

L'HONORABLE MURRAY ELSTON

MINISTRE DE LA SANTÉ

PRONONCÉE À LA

CONFÉRENCE PROVINCIALE-TERRITORIALE

DES MINISTRES DE LA SANTÉ

TORONTO (ONTARIO)

LE 25 SEPTEMBRE 1985

À VÉRIFIER AU MOMENT DE L'ALLOCUTION

AU NOM DE LA PROVINCE DE L'ONTARIO, DE NOTRE PREMIER MINISTRE L'HONORABLE DAVID PETERSON, ET EN MON NOM, JE SOUHAITE LA BIENVENUE À CHACUN DE VOUS À CETTE CONFÉRENCE DES MINISTRES DE LA SANTÉ.

PENDANT LE TEMPS QUE NOUS PASSERONS ENSEMBLE, NOUS TRAITERONS DE DIVERSES QUESTIONS QUI, AU COURS DE LA PROCHAINE DÉCENNIE, POURRONT AVOIR DES RÉPERCUSSIONS PROFONDES SUR LA SANTÉ DES CANADIENS ET SUR LE FONCTIONNEMENT DE NOS SYSTÈMES DE SANTÉ.

CET APRÈS-MIDI, NOUS EXAMINERONS TROIS IMPORTANTES QUESTIONS TOUCHANT LES SOINS DE SANTÉ, DES QUESTIONS SUR LESQUELLES J'AI HÂTE D'ENTENDRE VOS POINTS DE VUE ET VOS OPINIONS ET POUR LESQUELLES J'ESPÈRE QUE NOUS TROUVERONS DE NOUVELLES MODALITÉS DE COLLABORATION INTERPROVINCIALE.

LA SASKATCHEWAN ENTAMERA LA DISCUSSION SUR LE SYNDROME D'IMMUNO-DÉFICIENCE ACQUISE.

LA CROISSANCE DU SIDA EST DEVENUE UNE PRÉOCCUPATION NATIONALE ET INTERNATIONALE. EN FAIT, C'EST PROBABLEMENT LA QUESTION DE SANTÉ PUBLIQUE LA PLUS IMPORTANTE QUE NOUS DEVRONS AFFRONTER AU COURS DES PROCHAINES ANNÉES.

JUSQU'ICI, 309 CAS ONT ÉTÉ DIAGNOSTIQUÉS AU PAYS. 156 VICTIMES DE CETTE MALADIE SONT MAINTENANT DÉCÉDÉS ET 153 VIVENT TOUJOURS.

EN OUTRE, LE NOMBRE DE CAS SIGNALÉS DOUBLE À TOUS LES SEPT MOIS ET DEMI. ON PRÉVOIT MAINTENANT QUE, SI LA TENDANCE ACTUELLE SE POURSUIT, IL Y AURA 20 000 CAS DE SIDA AU PAYS D'ICI 1990.

DANS NOTRE PROPRE PROVINCE, EN 1982 CINQ CAS ÉTAIENT DIAGNOSTIQUÉS, EN 1983, 13 CAS, EN 1984, 45 CAS ET, CETTE ANNÉE, 68 NOUVEAUX CAS ONT ÉTÉ DÉCELÉS JUSQU'ICI.

LES PROVINCES ONT PRIS DES MESURES COMMUNES POUR LUTTER CONTRE LA PROPAGATION DE CETTE MALADIE EN FOURNISSANT DES FONDS AU PROGRAMME DE DÉPISTAGE ET D'EXAMEN DU SANG DE LA CROIX-ROUGE CANADIENNE. LE PROGRAMME BÉNÉVOLE DE DON DE SANG QUI EXISTE AU PAYS EST UN DE CEUX AUXQUELS LES CANADIENS ACCORDENT LE PLUS D'IMPORTANCE. CETTE AIDE FINANCIÈRE DES PROVINCES CONTRIBUERA À CONSERVER LA CONFIANCE DU PUBLIC À L'ÉGARD DU PROGRAMME.

JE TIENS BEAUCOUP À CONNAÎTRE VOS IDÉES CONCERNANT D'AUTRES MESURES QUE NOUS POURRIONS ENVISAGER. PLUS PARTICULIÈREMENT SUR LA FAÇON D'AMÉLIORER L'ÉCHANGE DE RENSEIGNEMENTS ENTRE LES PROVINCES, DE RÉGLER LES PROBLÈMES JURIDIQUES QUE COMMENCE À SUSCITER LA QUESTION DU CARACTÈRE CONFIDENTIEL DES DOSSIERS DES MALADES ET CELLE DE LA DISCRIMINATION AINSI QUE SUR L'À-PROPOS DE METTRE EN OEUVRE DES PROGRAMMES FÉDÉRAUX-PROVINCIAUX DE FINANCEMENT EN VUE DE MIEUX CONCERTER LA RECHERCHE ET DE LANCER UNE CAMPAGNE D'INFORMATION DU PUBLIC.

JE CROIS QUE NOUS POURRIONS ÉGALEMENT EXAMINER LA QUESTION DE LA DÉCLARATION OBLIGATOIRE DE CETTE MALADIE DANS TOUTES LES PROVINCES, CE QUI AMÉLIORERAIT NOTRE BASE DE DONNÉES ET NOS STATISTIQUES, AINSI QUE CELLE DU MAINTIEN DE NOTRE AIDE FINANCIÈRE À LA SOCIÉTÉ CANADIENNE DE LA CROIX-ROUGE DE FAÇON À POUVOIR VEILLER À LA QUALITÉ DE L'APPROVISIONNEMENT CANADIEN EN SANG.

UNE AUTRE QUESTION À L'ORDRE DU JOUR AUJOURD'HUI PORTE SUR LA TRANSPLANTATION D'ORGANES ET NOUS JETTERONS UN COUP D'OEIL SUR LE RAPPORT DU GROUPE DE TRAVAIL FÉDÉRAL-PROVINCIAL SUR LES CENTRES DE TRANSPLANTATION D'ORGANES VITAUX ET SUR CELUI DU GROUPE D'ÉTUDE SUR LE DON DE REINS DE L'ONTARIO.

COMME VOUS LE SAVEZ, LA TRANSPLANTATION DE REINS EST MAINTENANT CONSIDÉRÉE COMME LE MEILLEUR TRAITEMENT POUR LES MALADIES RÉNALES DE LA PHASE FINALE. LES TRANSPLANTATIONS DU COEUR, DU FOIE AINSI QUE LES TRANSPLANTATIONS COEUR-POUMONS SONT MAINTENANT DEVENUES DES FORMES ACCEPTABLES DE TRAITEMENT DANS DES CAS CHOISIS. SUR LE PLAN COÛT-AVANTAGES, LA TRANSPLANTATION SEMBLE AUSSI JUSTIFIABLE QUE TOUTE AUTRE MÉTHODE HABITUELLE PERMETTANT DE SAUVER DES VIES. DE PLUS, AU COURS DES DERNIÈRES ANNÉES, LES NOUVEAUX MÉDICAMENTS QUI EMPÊCHENT LE REJET DE L'ORGANE REÇU ONT CONSIDÉRABLEMENT AUGMENTÉ NOS TAUX DE SUCCÈS DANS CE DOMAINE.

J'AIMERAIS QUE NOUS EXAMINIONS TRÈS ATTENTIVEMENT LES RECOMMANDATIONS ET LES PROPOSITIONS FORMULÉES DANS LES DEUX RAPPORTS.

JE CROIS QU'IL NOUS INCOMBE DE MODIFIER LES LOIS ET LES POLITIQUES PROVINCIALES DE FAÇON À PROMOUVOIR LE DON ET LA TRANSPLANTATION D'ORGANES. SONT ÉGALEMENT TRÈS IMPORTANTES LES QUESTIONS DE FINANCEMENT, AINSI QUE D'INFORMATION ET DE SENSIBILISATION DU PUBLIC. J'ESPÈRE QUE NOUS POURRONS COMMENCER À ÉLABORER DES PROTOCOLES ET DES MÉCANISMES PERMETTANT D'ACCROÎTRE LA COLLABORATION INTERPROVINCIALE DANS DES MESURES VISANT À PROMOUVOIR L'ÉLABORATION DE PROGRAMMES PLUS ACTIFS DE TRANSPLANTATION D'ORGANES AU CANADA.

UNE AUTRE QUESTION SUR LAQUELLE NOUS DEVRONS NOUS PENCHER TRÈS ATTENTIVEMENT EST CELLE DU RAPPORT EASTMAN ET DU PRIX DES MÉDICAMENTS.

LE RAPPORT EASTMAN POURRAIT AVOIR DES RÉPERCUSSIONS IMPORTANTES SUR LES SYSTÈMES DE SOINS DE SANTÉ AU CANADA, ET SES RECOMMANDATIONS, SI L'ON Y DONNE SUITE, POURRAIENT INFLUER SUR LES PRIX À LA CONSOMMATION, LES DÉPENSES PROVINCIALES AINSI QUE SUR LES PERSPECTIVES DE DÉVELOPPEMENT ET D'EMPLOI AU SEIN DE L'INDUSTRIE DES PRODUITS DE PRESCRIPTION.

PAR EXEMPLE, ICI EN ONTARIO, EN VERTU DE NOTRE RÉGIME DE MÉDICAMENTS GRATUITS, NOUS AVONS DÉPENSÉ L'AN DERNIER 350 MILLIONS DE DOLLARS EN PRODUITS DE PRESCRIPTION, CE QUI NE COMPREND PAS LES RÉGIMES PRIVÉS DE REMBOURSEMENT DES MÉDICAMENTS NI LES MÉDICAMENTS ACHETÉS DIRECTEMENT PAR LA POPULATION. LES PROPOSITIONS FORMULÉES DANS LE RAPPORT EASTMAN CONCERNANT LES MODIFICATIONS À APPORTER À LA LOI SUR LES BREVETS POURRAIENT AUGMENTER D'ENVIRON 4 MILLIONS DE DOLLARS PAR ANNÉE LE COÛT D'EXPLOITATION DE CE PROGRAMME. SI L'ON TIENT COMPTE D'AUTRES PROPOSITIONS ET RECOMMANDATIONS, CE COÛT POURRAIT ÊTRE CONSIDÉRABLEMENT PLUS ÉLEVÉ.

JE CROIS QUE NOUS SOUSCRIVONS TOUS AUX INTENTIONS DU RAPPORT EASTMAN. NOUS SOMMES D'ACCORD QUE DES MESURES DOIVENT ÊTRE PRISES POUR MIEUX PROTÉGER LE CONSOMMATEUR CANADIEN ET POUR AUGMENTER SES CONNAISSANCES EN MATIÈRE DE PRODUITS DE PRESCRIPTION.

NOUS CONVIENDRONS TOUS QUE L'EXPANSION DE LA RECHERCHE ET DU DÉVELOPPEMENT ET LA CRÉATION D'EMPLOIS AU SEIN DE L'INDUSTRIE PHARMACEUTIQUE SÉRAIENT DES MESURES POSITIVES ET AVANTAGEUSES POUR LE PAYS.

À MON AVIS, LES PROVINCES DOIVENT EXAMINER ATTENTIVEMENT LES RECOMMANDATIONS DU RAPPORT EASTMAN ET EN DISCUTER AFIN DE DÉTERMINER SI ELLES NOUS AIDERONT VRAIMENT À RÉALISER NOS OBJECTIFS. JE CROIS ÉGALEMENT QUE LE GOUVERNEMENT FÉDÉRAL DOIT ACCORDER AUX PROVINCES ASSEZ DE TEMPS POUR ÉTUDIER LES QUESTIONS SOULEVÉES DANS LE RAPPORT, ET QU'IL NE DEVRAIT PAS AGIR TANT QUE LES PROVINCES N'AURONT PAS FAIT PART DE LEURS PRÉOCCUPATIONS ET DE LEURS PRIORITÉS.

POUR CE QUI EST DU PRIX DES MÉDICAMENTS, VOUS SAVEZ PROBABLEMENT QUE J'AI L'INTENTION DE PRÉSENTER CET AUTOMNE DES DISPOSITIONS LÉGISLATIVES QUI PERMETTRONT D'ÉTABLIR DES PRIX RÉALISTES POUR LES MÉDICAMENTS DANS CETTE PROVINCE TANT DANS LE CADRE DU RÉGIME DE MÉDICAMENTS GRATUITS DE L'ONTARIO QUE POUR LES PERSONNES QUI PAIENT ELLES-MÊMES LEURS MÉDICAMENTS.

PENDANT TROP LONGTEMPS ON A LAISSÉ SE DÉVELOPPER EN ONTARIO UNE SITUATION QUI A FAIT EN SORTE QUE LES PRIX INDiquÉS DANS NOTRE FORMULAIRE DE MÉDICAMENTS GRATUITS, QUI PERMET À NOS PHARMACIENS D'ÊTRE REMBOURSÉS EN VERTU DE NOTRE PROGRAMME DE MÉDICAMENTS GRATUITS, ÉTAIENT BEAUCOUP PLUS ÉLEVÉS QUE LES MONTANTS EFFECTIVEMENT PAYÉS PAR LA PLUPART DES PHARMACIENS POUR CES MÉDICAMENTS.

AU COURS DE NOTRE ENQUÊTE SUR CETTE QUESTION, LES REPRÉSENTANTS DE NOTRE MINISTÈRE ONT COMMUNIQUÉ AVEC DES COLLÈGUES DES MINISTÈRES DE LA SANTÉ DES AUTRES PROVINCES. ILS ONT REÇU UNE ENTIÈRE COLLABORATION CONCERNANT LES DIFFÉRENTES MODALITÉS DES PROVINCES EN CE QUI A TRAIT AUX RÉGIMES DE REMBOURSEMENT DES MÉDICAMENTS ET AUX RENSEIGNEMENTS DONT VOUS DISPOSIEZ EN MATIÈRE DE MARCHÉ.

C'EST GRÂCE À VOTRE COLLABORATION QUE NOUS AVONS PU FORMULER LA RÉPONSE DE L'ONTARIO ET JE VOUDRAIS VOUS REMERCIER DE L'AIDE ET DE L'APPUI QUE VOUS NOUS AVEZ APPORTÉS EN NOUS FOURNISSANT LES RENSEIGNEMENTS NÉCESSAIRES.

AU COURS DE L'ÉTUDE DES QUESTIONS À L'ORDRE DU JOUR AUJOURD'HUI, ET DEMAIN LORSQUE NOUS ÉTUDIERONS LES QUESTIONS DE LA GESTION DES COÛTS, DU PERSONNEL MÉDICAL, DE LA VISUALISATION PAR RÉSONNANCE MAGNÉTIQUE ET DES PESTICIDES, J'ESPÈRE QUE NOS DISCUSSIONS NOUS PERMETTRONT VRAIMENT DE DÉLIBÉRER ET DE NÉGOCIER.

TOUTES LES QUESTIONS À L'ORDRE DU JOUR SONT SUSCEPTIBLES D'ENTRAÎNER DES RÉPERCUSSIONS IMPORTANTES SUR LE FONCTIONNEMENT DE NOS SYSTÈMES DE SANTÉ. AU COURS DES DISCUSSIONS, NOUS AVONS LA POSSIBILITÉ D'APPRENDRE ET DE TIRER PARTI DE L'EXPÉRIENCE DE NOS COLLÈGUES.

N'HÉSITONS PAS À FAIRE PART DE NOS OPINIONS AVEC FRANCHISE ET SINCÉRITÉ, ENTENDONS-NOUS SUR LE FOND DES QUESTIONS QUI NOUS SONT SOUMISES ET RECHERCHONS UN ESPRIT DE COLLABORATION QUI PERMETTRA DE TROUVER DES SOLUTIONS.

PROVINCIAL-TERRITORIAL CONFERENCE OF
MINISTERS OF HEALTH

CONFÉRENCE PROVINCIALE-TERRITORIALE DES
MINISTRES DE LA SANTÉ

TORONTO, Ontario
September 25-26, 1985

TORONTO (Ontario)
Les 25 et 26 septembre 1985



LIST OF PUBLIC DOCUMENTS

LISTE DES DOCUMENTS PUBLICS

DOCUMENT NO. N° DU DOCUMENT	SOURCE ORIGINE	TITLE TITRE
* 860-165/014	Ontario	✓ News Release - Report on Task Force on Kidney Donation Released ✓ Communiqué - Publication du rapport du groupe d'étude sur le don de reins
860-165/018	Ontario	✓ Remarks by the Honourable Murray Elston Minister of Health
860-165/022	Secretariat	✓ List of Public Documents ✓ Liste des documents publics

* This publication can be
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INTERPROVINCIAL CONFERENCE OF MINISTERS AND
DEPUTY MINISTERS OF AGRICULTURE



The Cost of Agricultural Chemicals

Manitoba

St. John's, Newfoundland
July 22, 1985

THE COST OF AGRICULTURAL CHEMICALS

Honourable Bill Uruski
Minister of Agriculture
Province of Manitoba

INTRODUCTION

In the discussion on the farm financial crisis, the point is often made that interest rates and debt load are not the only financial problems facing farmers. Low market prices and the high cost of inputs are also contributing factors to the financial difficulties. In 1984 Canadian farmers spent \$612.9 million on pesticides which is an increase of 65 percent over the \$371.3 million spent in 1980 (Table 1). Saskatchewan farmers spent the largest amount and the 1984 expenditures were more than double the 1980 level.

Agricultural chemicals play a particularly crucial role due to the significant impact they have on productivity. Financially hard pressed farmers who are unable to pay for high priced chemicals for weed or insect control risk substantial losses that could result in the loss of their farms if infestations are severe. This is not a case of bad management by the farmer. It is a case of knowing what should be done, wanting to do it, but being unable to do it because of the high price of the necessary agricultural chemicals.

Herbicide prices have escalated rapidly during the 1970 - 1985 period. As each new herbicide reaches the market, its unique properties enable the manufacturer to market it at a premium over existing herbicides. Pricing of the existing herbicides is maintained at relatively high levels by patent protection. The situation is aggravated by Agriculture Canada's

policy of Product Specific Registration (PSR) which effectively extends the patent life of older products. The net effect has been to insulate the herbicide marketplace from competitive pressures which would otherwise serve to reduce pricing of these essential farm inputs.

HOW MUCH IS TOO MUCH?

The herbicide industry argues that high profit margins are required to finance research and development of new herbicides (nearly all of which occurs outside of Canada). The industry suggests that only one in ten thousand chemicals tested proves to be a promising commercial herbicide and that the research and development costs involved in getting this chemical on the market may range as high as \$15 to \$20 million.

However, it must be remembered that these costs are incurred with respect to a worldwide market. In terms of worldwide sales of pesticides, the Canadian market represents only 4 percent of the total. If we attribute 4 percent of development costs to the Canadian market, then over the patent life of the herbicide it would need to generate approximately \$800,000 ($0.04 \times \$20,000,000$) in excess of "normal" profits to finance the costs of initial development.

Historical evidence suggests that when a herbicide comes off-patent and is subject to competition from generics, retail price decreases 25 percent to 40 percent. Thus, from 25 to 40 percent of the price paid by farmers for herbicides is in excess of the price required to profitably manufacture and market the product (normal profits). Based on estimated annual

sales of pesticides of \$100 million in Manitoba and \$600 million in Canada, basic manufacturers reap \$25 to \$40 million from Manitoba farmers and \$150 to \$250 million from Canadian farmers annually in excess of their "normal" profits.

A sampling of retail prices of agricultural chemicals with and without patent protection clearly demonstrates the effect lack of competition has on chemical prices (Table 2). The additional returns to chemical companies from sales of patent protected products is sufficient to support research and development costs of ten new active ingredients every year. Canada represents only 4 percent of world sales which means the industry is earning enough worldwide to develop 250 new chemicals each year. However, typically only one or two new chemicals come on the market each year.

PRODUCT SPECIFIC REGISTRATION

Agriculture Canada's policy of Product Specific Registration (PSR) effectively extends the patent life of products.

Due to the expense of conducting required toxicology studies only major chemical companies are likely to develop required data to register a product once its patent expires. For example, indications are that Hoechst spent in excess of \$5,000,000 to register Rival. This reduces potential competition in the chemical industry and inflates prices as the company recoups this investment from the farmer.

Proposals to modify PSR (outlined in Agriculture Canada's Trade Memorandum) will still serve to extend patent protection.

These proposals suggest data ownership for 15 years from the time new toxicology studies are submitted. This provision will enable manufacturers to effectively extend patents and again reduce competition.

RECOMMENDATION

The cost of Canada's policies of patent protection and product registration for pesticides is placing an excessive financial burden on Canadian farmers. These costs do not appear to be justified in terms of the research and development costs for new pesticides or environmental and safety issues for existing products.

Many factors are involved in determining the prices of agricultural pesticides and a number of policy alternatives are available that will significantly reduce these costs.

A Commission of Inquiry should be established to examine all aspects of agricultural chemical pricing in Canada with full powers to obtain information, conduct research into agricultural chemical pricing and to make recommendations with the objective of reducing agricultural chemical costs to farmers consistent with human safety and environmental protection.

PESTICIDE EXPENSES AS A PERCENT OF TOTAL OPERATING EXPENDITURES BY PROVINCE, 1980 AND 1984

		EXPENDITURES			
		1980		1984	
		Pesticides	Total Operating & Depreciation	<u>Pesticides</u> <u>Total</u> Operating & Depreciation	Pesticides <u>Total</u> Operating & Depreciation
		thousand dollars		thousand dollars	%
CANADA		371,318	12,829,324	612,893	16,243,192 3.77
British Columbia		8,502	632,011	11,362	818,739 1.39
Alberta		72,215	2,578,957	132,017	3,323,903 3.97
Saskatchewan		95,050	2,395,431	191,595	3,324,032 5.76
Manitoba		57,093	1,226,657	104,435	1,611,983 6.48
Ontario		102,685	3,788,716	127,444	4,291,489 2.97
Quebec		24,708	1,802,792	30,908	2,327,165 1.33
New Brunswick		4,629	121,433	5,842	170,463 3.43
Nova Scotia		1,980	151,846	3,246	201,574 1.61
Prince Edward Island		4,329	108,033	5,832	143,652 4.06
Newfoundland		127	23,448	212	30,192 0.70

Source: Statistics Canada

TABLE 2

<u>Herbicide</u>	<u>Container</u>	<u>% Active</u>	<u>Price Per Container</u>	<u>Price Per Lb. Active</u>
Herbicides without Patent Protection				
24D Amine	20 1	50	52.00	2.36
MCPA Amine	20 1	50	74.00	3.36
TCA	25 Kg	85	100.00	2.13
Dalapon	25 Kg	74	133.00	3.26
Atrazine	10 1	50	40.50	3.67
				Ave. 2.96
Herbicides with Patent Protection				
Banvel	10 1	40	157.70	17.88
Torch DS	20 1	45	330.00	16.63
Hoegrass ES	20 1	28.4	244.00	19.49
Poast	14 1	18.4	360.90	63.54
Roundup	10 1	35.6	242.00	30.83
				Ave. 29.67
Specialty Herbicides with Patent Protection				
Lontrel	4 1	20	205.00	116.24
Glean	2 1	75	320.00	387.07

Source: The Manitoba-North Dakota Zero Tillage Farmers Association;
Presentation to the Senate Standing Committee on Agriculture, Fisheries
and Forestry; June 12, 1985.

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Traduction du Secrétariat

CONFÉRENCE INTERPROVINCIALE DES MINISTRES ET
DES SOUS-MINISTRES DE L'AGRICULTURE

Le coût des produits chimiques agricoles

Manitoba

St. John's (Terre-Neuve)

Le 22 juillet 1985

LE COÛT DES PRODUITS CHIMIQUES AGRICOLES

L'honorable Bill Uruski,
ministre de l'Agriculture,
province du Manitoba

INTRODUCTION

Lorsqu'on discute de la crise financière des exploitations agricoles, on rappelle souvent que les taux d'intérêt et le fardeau de la dette ne sont pas les seuls problèmes financiers auxquels les agriculteurs font face. En effet, les prix peu élevés du marché et le coût élevé des moyens de production sont d'autres facteurs qui s'ajoutent à leurs difficultés financières. Ainsi, en 1984, les agriculteurs canadiens ont dépensé 612,9 millions de dollars en antiparasitaires, somme qui dépasse de 65 p. 100 les 371,3 millions dépensés en 1980 (tableau 1). Ce sont les agriculteurs de la Saskatchewan qui ont dépensé le plus à ce chapitre, leurs frais pour 1984 atteignant le double de ce qu'ils étaient en 1980.

Les produits chimiques agricoles jouent un rôle particulièrement crucial en raison de leur répercussion importante sur la productivité. Les agriculteurs qui sont aux prises avec de graves difficultés financières et qui ne peuvent acheter les produits chimiques coûteux nécessaires à l'élimination des mauvaises herbes et au contrôle des insectes risquent des pertes considérables, y compris même la perte de leur ferme si les ravages sont étendus. Pareille situation n'est pas attribuable à une mauvaise gestion de la part d'un agriculteur. En effet,

celui-ci sachant très bien ce qui devrait être fait et souhaitant le faire n'y parvient pas à cause du prix élevé des produits chimiques agricoles nécessaires.

Le prix des herbicides a grimpé rapidement entre 1970 et 1985. Chaque fois qu'un nouvel herbicide arrive sur le marché, ses propriétés uniques permettent au manufacturier de le vendre plus cher que les herbicides existants. De surcroît, le prix de ces derniers se maintient à des niveaux relativement élevés grâce à la protection des brevets. Enfin, loin d'améliorer la situation, la politique d'homologation spécifique par produit du ministère fédéral de l'Agriculture prolonge en fait la durée du brevet des anciens produits. Conséquemment, ces divers facteurs ont réussi à mettre le marché des herbicides à l'abri de la pression exercée par la concurrence, qui aiderait, normalement, à réduire le prix de ces moyens de production essentiels à l'agriculture.

OÙ DOIT S'ARRÊTER LA COURSE AU PROFIT?

L'industrie des herbicides invoque la nécessité de réaliser des profits élevés afin de pouvoir financer la recherche et le développement dans ce domaine (la plupart de ces activités ayant cours à l'extérieur du Canada). Elle estime que, sur 10 000 produits chimiques soumis à des tests, un seul deviendra un herbicide commercial et que le coût de la recherche et du développement nécessaires pour commercialiser ce produit peut atteindre de 15 à 20 millions de dollars.

Toutefois, il faut rappeler que ces montants sont dépensés à l'échelle du marché international. Toutes proportions gardées, le marché canadien ne représente que 4 p. 100 du total des ventes mondiales d'antiparasitaires. Or, si nous attribuons 4 p. 100 des dépenses de développement au marché canadien, celui-ci devrait donc générer, pendant la durée du brevet d'un herbicide, environ 800 000 \$ ($0,04 \times 20\,000\,000$ \$) de plus que les profits "normaux" pour pouvoir financer le coût du développement initial.

Pourtant, il est prouvé que, lorsque le brevet d'un herbicide vient à échéance et que ce produit doit subir la concurrence de ceux qui n'ont pas de marque déposée, le prix de détail de cet herbicide diminue de 25 à 40 p. 100. Donc, le prix payé par les agriculteurs pour acheter des herbicides dépasse de 25 à 40 p. 100 le montant nécessaire au manufacturier pour rentabiliser et commercialiser son produit (profits normaux). D'après des ventes annuelles d'antiparasitaires évaluées à 100 millions de dollars au Manitoba et à 600 millions au Canada, les fabricants de nouveaux produits récoltent annuellement, en plus de leurs profits "normaux", de 25 à 40 millions de dollars aux dépens des agriculteurs manitobains et de 150 à 250 millions de dollars aux dépens des agriculteurs canadiens.

En examinant de façon fragmentaire les prix de détail des produits chimiques agricoles, dont le brevet est expiré ou non, on se rend nettement compte de l'effet que l'absence de concurrence peut avoir sur le prix des produits chimiques

(tableau 2). Les profits additionnels que réalisent les entreprises de produits chimiques en vendant des produits qui sont protégés par des brevets sont suffisants pour financer la recherche et le développement de dix nouvelles matières actives chaque année. Puisque le marché canadien ne représente que 4 p. 100 des ventes mondiales, cela signifie que, à l'échelle internationale, l'industrie fait des gains suffisants pour pouvoir développer 250 nouveaux produits chimiques par année. Pourtant, seul un ou deux nouveaux produits arrivent habituellement sur le marché chaque année.

HOMOLOGATION SPÉCIFIQUE PAR PRODUIT

La politique d'homologation spécifique par produit d'Agriculture Canada permet effectivement de prolonger la durée du brevet d'un produit.

Comme il est très coûteux de faire les essais toxicologiques requis, seules les plus grandes entreprises de produits chimiques sont en mesure d'élaborer les données exigées pour déposer une marque de fabrique après l'expiration d'un brevet. Par exemple, la firme Hoechst aurait dépensé plus de 5 millions de dollars pour déposer la marque Rival. Aussi, cette politique a-t-elle pour conséquence de minimiser la concurrence potentielle dans l'industrie des produits chimiques et d'accroître anormalement les prix puisque les entreprises choisissent de récupérer leurs déboursés auprès des agriculteurs.

Les propositions qui ont été formulées en vue de modifier la politique d'homologation spécifique par produit (exposées dans une circulaire à la profession publiée par Agriculture Canada) permettront quand même de prolonger la protection des brevets.

Ces propositions visent à accorder le droit de propriété des données pour une période de 15 ans à partir du moment où les résultats des examens toxicologiques sont soumis. Une telle mesure permettra aux manufacturiers de prolonger effectivement leurs brevets et, encore une fois, de restreindre la concurrence.

RECOMMANDATION

La politique canadienne en matière de protection des brevets et de dépôt des marques de fabrique pour les antiparasitaires représente un fardeau financier démesuré pour les agriculteurs. Celui-ci ne paraît pas justifié par rapport au montant des dépenses consacrées à l'élaboration de nouveaux antiparasitaires ou à l'étude des questions liées à l'environnement et à la sécurité concernant les produits existants.

Étant donné que de nombreux facteurs interviennent dans la fixation du prix des antiparasitaires agricoles, il existe un certain nombre de mesures susceptibles de réduire sensiblement ce coût.

Il serait donc approprié de constituer une commission d'enquête qui aurait pour mandat d'examiner tous les aspects de la fixation du prix des produits chimiques agricoles au Canada et qui serait investie de tous les pouvoirs nécessaires pour obtenir des renseignements, effectuer des recherches sur le processus de fixation des prix des produits chimiques agricoles et formuler des recommandations visant à réduire le prix que les agriculteurs doivent payer et ce, tout en respectant les critères de sécurité et la protection de l'environnement.

- 1 - TABLEAU 1
- 2 - POURCENTAGE DES DÉPENSES EN ANTIPARASITAIRES PAR RAPPORT AUX
DÉPENSES GLOBALES D'EXPLOITATION, PAR PROVINCE, EN 1980 ET EN
1984
- 3 - DÉPENSES
- 4 - 1980
- 5 - Antiparasitaires
- 6 - Dépenses totales d'exploitation et dépréciation
- 7 - Antiparasitaires
Dépenses totales d'exploitation et dépréciation
- 8 - 1984
- 9 - Antiparasitaires
- 10- Dépenses totales d'exploitation et dépréciation
- 11- Antiparasitaires
Dépenses totales d'exploitation et dépréciation
- 12- en milliers de dollars

13- CANADA

14- Colombie-Britannique

15- Alberta

16 - Saskatchewan

17 - Manitoba

18 - Ontario

19 - Québec

20 - Nouveau-Brunswick

21 - Nouvelle-Écosse

22 - Île-du-Prince-Édouard

23 - Terre-Neuve

24 - Source : Statistique Canada

- 1 - TABLEAU 2
- 2 - Antiparasitaire
- 3 - Contenant
- 4 - % de matière active
- 5 - Prix par contenant
- 6 - Prix par livre de matière active
- 7 - Herbicides pour lesquels il n'y a aucune protection de
brevet
- 8 - 24 D Amine
- 9 - MCPA Amine
- 10 - TCA
- 11 - Dalapon
- 12 - Atrazine
- 13 - Moyenne

- 14 - Herbicides pour lesquels il y a une protection de brevet
- 15 - Banvel
- 16 - Torch DS
- 17 - Hoegrass ES
- 18 - Poast
- 19 - Roundup
- 20 - Moyenne
- 21 - Herbicides spéciaux pour lesquels il y a une protection de brevet
- 22 - Lontrel
- 23 - Glean
- 24 - Source : The Manitoba-North Dakota Zero Tillage Farmers Association; exposé soumis au Comité sénatorial de l'agriculture, des pêches et des forêts, le 12 juin 1985

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FARM FINANCING, CREDIT AND TAXATION

A Paper Presented to the Ministers and
Deputy Ministers of Agriculture

St. John's, Newfoundland

July, 1985

Honourable Bill Uruski
Minister of Agriculture
Manitoba

INTRODUCTION

The farm financial situation has been the item of greatest concern at our Agriculture Ministers' meeting for several years. Many Canadian farmers continue to be in severe financial difficulty and prospects are slim that the situation will improve significantly within the next few years. Therefore, this question is still the major problem we face as Ministers and it is the most important item we will be discussing at this meeting.

REVIEW OF FARM FINANCIAL DIFFICULTIES

While we are all fully aware of the severe financial difficulties in which farmers find themselves, it is useful to briefly review the data to clearly define the problem we are facing.

The 1984 Farm Survey coordinated by the Farm Credit Corporation discovered that 20 percent of Canadian farmers were in severe^{1/} financial difficulty. On a regional basis, the problems were greatest in Alberta with 27 percent of farmers in

^{1/} Meets 1 to 3 of the following:

- (a) If debt expenses (estimated principal plus interest payments) is greater than 40% of Farm Sales.
- (b) If total borrowings intermediate and long term for 1983 are greater than 110% of total investment for 1983.
- (c) If net worth is less than 15% of total assets.

severe difficulty while the Atlantic region had only 13 percent of their farmers classified as being in severe difficulty. An additional 8 percent of Canadian farmers were determined to be in moderate financial difficulty.

To bring these classifications into more personal terms, 46,394 farmers were in severe financial difficulty and 18,924 farmers were in moderate financial difficulty. This means approximately 250,000 Canadians, when the farm family is included, are living under extreme financial pressures with very limited incomes on which to live and the emotional stress which results from these circumstances.

Who are the farmers in greatest financial difficulty? We have all been saying it is our younger, beginning farmers who have had to borrow substantial amounts of capital to establish their farms that have been hardest hit by high interest rates and low commodity prices. The FCC Survey has confirmed and quantified this conclusion.

When the Survey results are analyzed on the basis of equity, the third with the lowest equity in the western provinces and Ontario had capital borrowings that exceeded their capital investment in 1983 (Table 1). In Manitoba this group borrowed an average of \$33,972 but they only invested an average of \$21,834 in capital assets. This means they had to borrow \$12,000 to pay living expenses and to meet operating costs. In other words, on average their income fell \$12,000 short of their requirements.

According to the survey the greatest shortfall at \$21,132 occurred in Alberta while in Quebec and the Atlantic region farmers in the low equity group made capital investments that exceeded their borrowings.

In contrast the medium equity groups in Manitoba were able to invest \$24,666 in capital assets while borrowing only \$12,532. This group paid operating and living expenses and had a surplus of \$12,134 for investment. In all provinces this group had a surplus to invest with the largest amount available at \$18,235 being in Alberta.

There are two factors that distinguish the medium equity group from the low equity group. The first is length of time farming with the low equity group averaging 13 years and the medium equity group averaging 21 years.

The second is, of course, debt load. The low equity group in Manitoba had debts of \$180,109 compared to only \$61,114 for the medium equity group. Interest on the additional \$118,995 in debt for one year at 13 percent is \$15,500. This is the single most important item contributing to the financial difficulties being experienced by farmers today.

We had the data for Manitoba further analyzed by dividing the low equity group into two groups on the basis of equity. For this group, of 1/6th of the farmers with the lowest equity, the length of time farming dropped to 10 years and average debt load increased to \$221,404. The amount of capital borrowed in 1983 exceeded the amount invested by \$16,025. This shortfall is equivalent to 7 percent interest on the total debt.

All provinces have attempted to deal with the general situation with a variety of programs. In addition to the general programs, Manitoba has put intensive effort into working out specific solutions for those farmers who have almost reached the end of the line. This effort has been restricted to farmers who are judged to have potential long term viability (they have the required management ability).

Our results to date have been mixed. Approximately 50 percent have financial plans in place with adequate terms for long run viability. Proposals are still being worked on for approximately two-thirds of the remaining farmers. The financial institutions have rejected the proposals worked out for the balance. The major problem is more debt than can be serviced at existing interest rates, input costs and commodity prices.

A brief look at the bankruptcy numbers (Table 2) confirms that the severe financial difficulties of some farmers is continuing. In 1984, a record number (551) of Canadian farmers declared bankruptcy. For the January-May 1985 period, 233 farmers had declared bankruptcy, second only to the 1984 level for this time period. We hardly need to be reminded that formal bankruptcies represents only the "tip of the iceberg" as many young farmers have chosen to sell out before the high interest rates on their debts have completely eaten up their equity.

The outlook for farm income does not provide any hope that the situation is going to improve. In December, Statistics Canada projected realized net farm income for 1985 to be virtually identical to the 1984 level. However, the preliminary

estimates for 1984 have been revised sharply upward and the price expectations for the major commodities; beef, hogs and grains have been revised downward. Thus we can expect farm income to be significantly lower in 1985 than it was in 1984. The situation could worsen further if the developing drought situation in Saskatchewan and Alberta continues or major weather problems occur elsewhere.

The high bankruptcy rate can be expected to continue for at least two or three more years as it will take several years of good crops and improving prices for farmers teetering on the brink of bankruptcy to recover.

ACTIONS TO DEAL WITH FARM FINANCIAL DIFFICULTIES

Agriculture Ministers across Canada have been very concerned about the plight of farmers in severe financial difficulties for several years. This topic was the priority agenda item at our annual conference last July in Winnipeg.

Because of the complexity of the problem, we decided to establish a Federal/Provincial Task Force on Agricultural Finance to investigate innovative mechanisms to meet the financial and credit needs of farmers.

A wide variety of financial instruments is necessary to respond to the diverse needs of the industry. In particular, the Task Force was asked to investigate agribonds, credit and mortgage guarantees and interest rate insurance, as well as other ideas developed by farm organizations, lending institutions and the Task Force itself.

The Task Force reported to a special meeting of Agriculture Ministers in November in Toronto. The Task Force placed twelve proposals before us for our consideration. (See appendix for complete list.) It was agreed to recommend five proposals for immediate action. An additional five proposals were referred for further study.

The proposal for a national operating loan guarantee program for farmers in financial difficulty was not acted upon as the Federal Minister declined the request to assist farmers in this area. I still believe a national program would be very desirable and in my meetings with representatives of the banks, they have also stated (on their own initiative) that a national operating loan guarantee program would be desirable.

Of the five proposals recommended only two have been acted on to date: (1) improvements in cash advance programs and (2) extension of Small Business Bonds.

We have laboured mightily over the last year and farmers still cannot see that we have been at work. There has been no meaningful improvement in the financial support available to Canadian farmers.

ACTIONS REQUIRED ON FARM FINANCE AND TAXATION

The combination of high interest rates and low commodity prices (relative to production costs) has made it impossible for young farmers without a large equity base to continue farming. The difficulties facing someone who wishes to start farming are even greater.

It is clear that concerted actions by governments is required if this situation is to be turned around.

There are two options available to reduce interest costs to farmers:

1. Change national monetary policy so that real interest rates revert to their normal level of 3 percent above the rate of inflation.
2. Transfer public funds either directly through interest rate subsidies or indirectly through the tax system to lower farmers interest rates to the desired level.

I view with extreme disappointment that lack of action by the Federal Government on all of the recommendations to reduce interest costs to farmers.

The extension of the Special Farm Financial Assistance Program, as we recommended, was refused.

The establishment of an agribond program as recommended by many people including the Standing Committee of the House of Commons on Finance, Trade and Economic Affairs was ignored in the recent budget.

These recommendations must be acted upon if we are to reverse the trend of farm bankruptcies.

Further action is required to help save those farmers who are already on the brink of bankruptcy. (Saskatchewan has already acted by passing the Farm Land Security Act). The federal Parliament has exclusive authority with respect to

- interest and banking
- bankruptcy and insolvency

It is imperative that this authority be used to update the Farmers Creditors Arrangements Act or to amend the Bankruptcy Act along the lines proposed in the former Bill C-17.

Finally, steps must be taken that will assist people who are entering the industry, but who are not yet full-time farmers. (This is in addition to reduced interest costs already outlined.) We have previously discussed the necessary change to Section 31 of the Income Tax Act and requested action on them. The Standing Committee on Finance, Trade and Economic Affairs made specific recommendations that would help considerably to solve the problems in this area. As a minimum step, these recommendations must be implemented.

CONCLUSION

The actions outlined above must be taken immediately, or at our national conference next year, we will be looking back as we are this year and see that very little has happened. Why are we able to provide a large benefit to retiring farmers with

up to \$500,000 in capital gains and unable to do anything for the individuals who are continuing to farm and are the future of the industry?

Let us take concerted action now on behalf of the future of all Canadian farmers.

TABLE I

COMPARISON OF CAPITAL INVESTED AND CAPITAL BORROWED AS A MEASURE OF

FARM FINANCIAL DIFFICULTY - 1983

B.C.	ALBERTA	SASKATCHEWAN	MANITOBA	ONTARIO	QUEBEC	ATLANTIC
		<u>Low Equity</u>				
Capital Invested	\$52,053	\$45,511	\$21,834	\$51,770	\$25,250	\$29,750
Capital Borrowed	73,185	56,769	33,972	43,529	23,714	23,451
Excess of Investment Over Borrowed	(21,132)	(11,258)	(12,138)	(11,759)	1,536	6,299
Number of Years Farming	14	14	15	15	11	16
		<u>Medium Equity</u>				
Capital Invested	37,026	30,799	24,666	21,796	18,263	19,752
Capital Borrowed	18,791	16,820	12,532	7,744	8,980	5,657
Excess of Investment Over Borrowed	18,235	13,979	12,134	14,052	9,283	14,095
Number of Years Farming	21	23	25	21	18	20
		<u>High Equity</u>				
Capital Invested	17,700	17,139	14,040	6,208	9,252	5,274
Capital Borrowed	1,328	2,655	271	28	202	197
Excess of Investment Over Borrowings	16,372	14,484	13,769	6,180	9,050	5,077
Number of Years Farming	29	32	32	25	27	32

TABLE 2
FARM BANKRUPTCIES

	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u> (Jan.-May)
Newfoundland	-	-	1	1	1	1	-
Nova Scotia	3	6	4	3	8	5	-
P.E.I.	1	-	-	2	2	4	2
New Brunswick	1	1	3	2	6	2	4
Quebec	14	44	54	143	125	162	56
Ontario	65	123	140	176	165	154	68
Manitoba	1	14	14	30	62	62	34
Saskatchewan	14	16	19	24	45	48	19
Alberta	16	8	18	24	47	74	37
British Columbia	9	10	8	5	26	39	13
N.W.T.	1	-	-	-	1		
Canada	125	222	261	410	488	551	233
Canada (Jan.-May)	47	89	117	188	191	274	235

Source: Consumer and Corporate Affairs
Bankruptcy Branch

APPENDIX

BRIEFING NOTES - TASK FORCE ON AGRICULTURAL FINANCE

FEDERAL-PROVINCIAL MEETING OF MINISTERS

Toronto - November 7 & 8, 1984

Recommendation 6.1

Extend the Special Farm Financial Assistance Program (SFFAP) for two years to farmers in financial difficulty, accepting new participants and extending further benefits to existing participants.

Recommendation 6.2

Work with private lending institutions to promote the introduction and/or more wide-spread offering of financial instruments which are suited to the needs of agriculture in the 1980's and beyond. Some examples of instruments to be discussed include: long term fixed rate interest loans, accrued interest rate mortgages, shared appreciation mortgages, fixed rate operating credit, and shared risk mortgages as well as futures and options market.

Recommendation 6.3

Encourage commercial lenders to make more active use of the Small Business Bond (SSB) as a mechanism to assist in debt restructuring for farmers in financial difficulty.

Extend the period during which Small Business Bonds (SBB) can be negotiated beyond December 31, 1985 to December 31, 1989. Make provision to allow existing SBB's coming due before December 31, 1989 to be rolled into a new bond.

Recommendation 6.4

Provide guarantees for privately financed farm mortgages.

Recommendation 6.5

Develop a program of guarantees of intermediate term loans at fixed rates of interest for terms of one to five years.

Recommendation 6.6

Streamline and update the Farm Syndicates Credit Act to further encourage co-operative purchase of machinery.

Recommendation 6.7

Improvement in cash advance systems.

Recommendation 6.8

Develop a national agribond strategy. Further development requires Ministerial decisions on funding sources and levels, priority uses, and alternative agencies and means to deliver the program.

Recommendation 6.9

Examine the need for a national operating loan guarantee program for farmers in financial difficulty.

Recommendation 6.10

Prepare a study of the feasibility of new farmer controlled financial institutions, such as the farmers' bank proposal.

Recommendation 6.11

Examine further with experienced agencies such as CMHC, the development of a scheme to protect against interest rate increases on commercial mortgage loans.

Recommendation 6.12

Study the potential for a Registered Farm Investment Fund.

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Traduction du Secrétariat

LE FINANCEMENT ET LE CRÉDIT AGRICOLES ET LE RÉGIME FISCAL

Document présenté aux ministres
et sous-ministres de l'Agriculture

St. John's (Terre-Neuve)

Juillet 1985

L'honorable Bill Uruski,
ministre de l'Agriculture
du Manitoba

INTRODUCTION

La situation financière des agriculteurs canadiens est, depuis plusieurs années, au premier rang des préoccupations à l'ordre du jour des conférences des ministres de l'Agriculture. De nombreux agriculteurs éprouvent encore de graves difficultés financières et il semble peu probable que les choses s'améliorent sensiblement dans les prochaines années. Ce problème, qui demeure le plus grand auquel nous ayons à faire face en tant que ministres, figure donc en tête de liste des points à discuter durant la présente réunion.

EXAMEN DES DIFFICULTÉS FINANCIÈRES DES AGRICULTEURS

Bien que nous connaissions parfaitement les graves difficultés financières que doivent affronter les agriculteurs, il n'est pas inutile d'en revoir brièvement les principales données afin de définir clairement le problème à résoudre.

D'après le Sondage agricole 1984, coordonné par la Société du crédit agricole (SCA), 20 p. 100 des agriculteurs canadiens font face à de graves¹ difficultés financières. On y a observé que, à l'échelle régionale, l'Alberta connaissait la pire situation avec 27 p. 100 de ses agriculteurs aux prises avec de graves difficultés et que, par contre, la région Atlantique n'en

1/

C'est-à-dire une des trois situations suivantes :

- (a) Si le fardeau de la dette (soit le montant estimatif des paiements de capital et d'intérêts) est supérieur à 40 p. 100 des ventes agricoles.
- (b) Si l'ensemble des emprunts à moyen et à long terme pour 1983 représente plus de 110 p. 100 de tous les investissements effectués cette année-là.
- (c) Si l'actif net est inférieur à 15 p. 100 du total de l'avoir.

comptait que 13 p. 100 dans une telle situation. Enfin, 8 p. 100 des agriculteurs ont été considérés comme étant en situation moyennement difficile.

Si l'on transpose ces classifications en nombres d'agriculteurs, on constate que 46 394 agriculteurs éprouvent de graves difficultés financières et que 18 924 se trouvent dans une situation moyennement difficile. Ainsi, 250 000 Canadiens, soit les agriculteurs et leurs familles, subissent des contraintes financières excessives, ne disposant pour vivre que de revenus très limités, et sont obligés de supporter les tensions émotives que provoquent de pareilles circonstances.

Qui sont les agriculteurs qui éprouvent les plus grandes difficultés financières? Nous avons toujours dit qu'il s'agissait de jeunes agriculteurs à leurs débuts qui ont été obligés de faire des emprunts considérables pour s'établir et qui ont été frappés le plus durement par les taux d'intérêt élevés et par les prix peu élevés des produits de base. On retrouve cette même conclusion, quantifiée, dans le Sondage de la SCA.

Lorsqu'on analyse les résultats du Sondage en regard de l'avoir des propriétaires, un tiers du groupe à faible avoir net des provinces de l'Ouest et de l'Ontario ont fait des emprunts de capital excédant leurs investissements en 1983 (tableau 1). Au Manitoba, cette catégorie d'agriculteurs a emprunté en moyenne 33 972 \$, mais n'a investi en immobilisations qu'une moyenne de 21 834 \$. En d'autres termes, ils ont dû emprunter 12 000 \$ pour payer leurs frais de subsistance et pour faire face aux dépenses d'exploitation. En moyenne, leur revenu a donc été inférieur de 12 000 \$ à leurs besoins. Selon le Sondage, c'est l'Alberta qui enregistre le plus grand manque à gagner d'un montant de 21 132 \$, alors qu'au Québec et dans la région Atlantique les agriculteurs du groupe à faible avoir net ont fait des investissements d'un montant supérieur à leurs emprunts.

À l'opposé, la catégorie d'agriculteurs manitobains ayant un avoir net moyen ont pu investir 24 666 \$ en immobilisations et ils n'ont emprunté que 12 532 \$. Ainsi, après avoir payé leurs frais d'exploitation et de subsistance, ces agriculteurs disposaient d'un excédent de 12 134 \$ pouvant servir aux investissements. Dans toutes les provinces, ce groupe d'agriculteurs avaient un montant excédentaire à investir et c'est en Alberta que le plus grand surplus a été enregistré, soit un montant de 18 235 \$.

La distinction entre les catégories d'agriculteurs à faible avoir net et à avoir net moyen tient à deux facteurs. L'un de ceux-ci est leur nombre d'années d'expérience en tant qu'exploitant agricole : les premiers comptent en moyenne 13 années d'expérience, alors que les autres en comptent 21.

Le deuxième facteur est, bien sûr, le fardeau de la dette. Le groupe d'agriculteurs manitobains à faible avoir net est endetté de 180 109 \$ comparativement à seulement 61 714 \$ pour l'autre catégorie. Au taux de 13 p. 100, l'intérêt sur le montant supplémentaire de dette de 118 995 \$ s'élève, pour une année, à 15 500 \$. Voilà le principal élément qui rend difficile la situation financière dans laquelle se trouvent les agriculteurs aujourd'hui.

Nous avons poussé plus loin l'analyse des données sur le Manitoba en divisant en deux groupes la catégorie des agriculteurs à faible avoir net, sur la base de leur avoir. Nous avons alors constaté qu'un sixième de ceux ayant le plus faible avoir net avait en moyenne seulement 10 années d'expérience et que le fardeau moyen de leur dette atteignait 221 404 \$. En outre, le montant de capital emprunté en 1983 était de 16 025 \$ plus élevé que leurs investissements. Cette différence correspond à un taux d'intérêt de 7 p. 100 sur la dette globale.

Toutes les provinces ont tenté d'améliorer la situation générale des agriculteurs au moyen de divers programmes. Ainsi, en plus des programmes généraux, le Manitoba a travaillé avec acharnement pour trouver des solutions précises visant à aider particulièrement les agriculteurs qui sont presque à bout de ressources. Ces mesures s'adressent uniquement à ceux dont l'exploitation a été jugée potentiellement viable à long terme (c'est-à-dire à ceux qui possèdent la capacité de gestion requise).

Jusqu'à maintenant, les résultats obtenus sont divers. Ainsi, des plans financiers comportant des conditions propres à garantir la viabilité à long terme ont été établis pour environ 50 p. 100 de ces agriculteurs. Pour les deux tiers des autres agriculteurs, des propositions sont encore à l'ébauche. Quant à ceux qui restent, les institutions financières ont rejeté les propositions qui avaient été élaborées pour eux, le plus grand problème étant que le montant de la dette est trop substantiel pour pouvoir être remboursé aux taux d'intérêt actuels et selon le coût des moyens de production et le prix de vente des produits.

Si on examine brièvement les données sur les faillites (tableau 2), il est évident que certains fermiers demeurent en situation financière très difficile. En 1984, un nombre sans précédent (551) d'agriculteurs canadiens ont fait faillite. Pour la période de janvier à mai 1985, le chiffre est de 233, n'ayant été dépassé qu'en 1984, pour la même période. Est-il besoin de rappeler que les faillites officielles ne représentent qu'une infime partie de la réalité, puisque bon nombre de jeunes fermiers ont préféré vendre leur exploitation plutôt que de voir leur avoir disparaître complètement par suite de paiements d'intérêt trop élevés.

Les perspectives en matière de revenu agricole ne permettent nullement d'entrevoir une amélioration de la situation. En effet, Statistique Canada a prévu en décembre que le revenu agricole net pour 1985 serait presque identique à celui de 1984. Or, les estimations préliminaires pour 1984 ont été augmentées substantiellement et les prix de vente probables des principaux produits tels le boeuf, le porc et les grains ont été révisés à la baisse. Conséquemment, le revenu agricole sera probablement sensiblement plus bas en 1985 qu'il ne l'était en 1984. La situation pourrait se détériorer davantage si la sécheresse qui frappe actuellement la Saskatchewan et l'Alberta persiste ou si d'autres graves problèmes climatiques surviennent ailleurs.

On prévoit que le taux de faillites demeurera élevé pendant les deux ou trois prochaines années, puisqu'il faudra plusieurs bonnes récoltes et des hausses de prix pour que les agriculteurs qui sont sur le point de faire faillite puissent se remettre d'aplomb.

MESURES VISANT À RÉSOUDRE LES DIFFICULTÉS FINANCIÈRES DES AGRICULTEURS

Depuis plusieurs années, tous les ministres de l'Agriculture au Canada se préoccupent de la situation des agriculteurs qui font face à de graves difficultés financières. Ce point de figurait d'ailleurs au premier plan de l'ordre du jour de notre conférence annuelle de juillet dernier, à Winnipeg.

En raison de la complexité du problème, nous avons décidé de constituer un Groupe de travail fédéral-provincial sur le financement agricole pour tenter de trouver de nouveaux mécanismes pouvant répondre aux besoins des agriculteurs en matière de financement et de crédit.

Pour répondre aux besoins divers de l'industrie agricole, il faut pouvoir offrir une très vaste gamme d'instruments financiers. Par exemple, le Groupe de travail a été chargé d'étudier les obligations agricoles, les garanties de crédit et les garanties hypothécaires, l'assurance contre l'augmentation des taux d'intérêt, ainsi que d'autres idées élaborées par les organismes agricoles, les institutions de prêt et le Groupe de travail lui-même.

Le Groupe de travail a fait rapport de ses résultats à une réunion spéciale des ministres de l'Agriculture, qui a eu lieu en novembre à Toronto. Il nous a alors soumis 12 propositions (voir la liste complète à l'annexe). Nous avons ensuite décidé de recommander la mise en oeuvre de cinq d'entre elles et d'en réexaminer cinq autres plus tard.

Aucune décision n'a été prise quant à la proposition de créer un programme national de garantie des prêts d'exploitation pour les agriculteurs en difficulté financière, étant donné que le ministre fédéral a refusé de donner suite à la demande d'aide en ce domaine. Je persiste à croire qu'un programme national serait très souhaitable. De même, lorsque j'ai rencontré des représentants des institutions bancaires, ceux-ci ont affirmé (spontanément) qu'un programme national de garantie des prêts d'exploitation serait souhaitable.

Des cinq propositions qui avaient été recommandées, deux seulement ont été exécutées jusqu'à maintenant : il s'agit (1) de l'amélioration des programmes d'avances de fonds et (2) de la reconduction du Programme des obligations pour la petite entreprise.

Nous avons travaillé d'arrache-pied depuis un an et, pourtant, les agriculteurs n'en voient toujours pas les résultats. En effet, on ne constate aucune amélioration significative du soutien financier destiné aux agriculteurs canadiens.

MESURES NÉCESSAIRES EN MATIÈRE DE FINANCEMENT AGRICOLE ET DE RÉGIME FISCAL

Il est devenu impossible pour les jeunes agriculteurs ne possédant pas un avoir important de poursuivre leurs activités en raison des taux d'intérêt élevés et des bas prix des produits de base (comparativement aux coûts de production). Quant à ceux qui voudraient devenir agriculteurs, les difficultés auxquelles ils doivent faire face sont encore plus grandes.

IL est évident que, pour renverser la vapeur, les gouvernements doivent agir de façon concertée.

Il existe deux façons possibles de réduire le coût des intérêts que les agriculteurs doivent payer :

1. Modifier la politique monétaire nationale de façon que les taux d'intérêt réels reviennent à leur niveau normal de 3 p. 100 au-dessus du taux d'inflation.
2. Transférer des fonds publics, soit directement grâce à des subventions touchant les taux d'intérêt, soit indirectement par l'entremise du régime fiscal, de façon à réduire au niveau souhaité les taux d'intérêt demandés aux cultivateurs.

Je suis extrêmement déçu que le gouvernement fédéral n'ait pris de décision sur aucune des recommandations visant à réduire le coût des taux d'intérêt payés par les agriculteurs.

Ainsi, la reconduction du Programme spécial d'aide financière à l'agriculture, que nous avons recommandée, a été refusée.

De surcroît, le dernier budget ne tenait aucunement compte du programme d'obligations agricoles que plusieurs avaient recommandé, y compris le Comité permanent (de la Chambre des communes) des finances, du commerce et des questions économiques.

Pourtant, si l'on veut enrayer le phénomène des faillites agricoles, il faut mettre en oeuvre ces recommandations.

D'autres mesures sont nécessaires pour aider à sauver les agriculteurs qui sont sur le bord de la faillite (la Saskatchewan est déjà passée à l'action en adoptant une loi sur la protection des terres agricoles (Farm Land Security Act)). Le Parlement fédéral a, quant à lui, la compétence exclusive dans les domaines suivants :

- taux d'intérêt et banques
- faillites et insolvabilité.

Il est donc impératif qu'il utilise ses pouvoirs pour actualiser la Loi sur les arrangements entre cultivateurs et créanciers ou pour modifier la Loi sur la faillite conformément à l'ancien projet de loi C-17.

En dernier lieu, il faut prendre des mesures pour aider ceux qui veulent s'établir dans cette industrie, sans être encore à temps plein (cette mesure s'ajoute à celle déjà énoncée concernant la réduction des taux d'intérêt). Nous avons déjà discuté des changements qu'il faudrait apporter à l'article 31 de la Loi de l'impôt sur le revenu et avons demandé qu'on y donne suite. Le Comité permanent des finances, du commerce et des questions économiques a formulé des recommandations précises qui pourraient aider énormément à résoudre les problèmes dans ce

domaine. Dans un premier temps, il faudrait à tout le moins mettre en oeuvre ces recommandations.

CONCLUSION

Les mesures énoncées précédemment devraient être prises immédiatement, sinon, nous risquons, à notre conférence nationale de l'année prochaine, de constater, comme nous le faisons cette année, que peu de choses auront changé. Comment se fait-il que, d'une part, nous puissions accorder aux agriculteurs à la retraite un profit considérable pouvant atteindre 500 000 \$ en gain de capital et que, d'autre part, nous ne puissions rien faire pour ceux qui continuent à exploiter leur ferme et qui représentent en somme l'avenir de l'industrie?

Joignons donc nos efforts dès maintenant pour préserver l'avenir de tous les agriculteurs canadiens.

TABEAU 1
COMPARAISON ENTRE L'INVESTISSEMENT EN IMMOBILISATIONS
ET LES EMPRUNTS EN CAPITAL COMME MOYEN DE MESURER LA GRAVITÉ
DE LA SITUATION FINANCIÈRE DES AGRICULTEURS - 1983

C.-B.

ALBERTA

SASKATCHEWAN

MANITOBA

ONTARIO

QUÉBEC

ATLANTIQUE

Faible avoir net

Investissement en immobilisations

Emprunts en capital

Excédent des investissements sur les emprunts

Nombre d'années d'exploitation

Avoir net moyen

Investissement en immobilisations

Emprunts en capital

Excédent des investissements sur les emprunts

Nombre d'années d'exploitation

Avoir élevé

Investissement en immobilisations

Emprunts en capital

Excédent des investissements sur les emprunts

Nombre d'années d'exploitation

Source : Sondage agricole 1984; SCA - Tableaux 18, 19 et 20

TABLEAU 2

FAILLITES AGRICOLES

	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>
							(janv. à mai)

Terre-Neuve
Nouvelle-Écosse
I.-P.-É.
Nouveau-Brunswick
Québec
Ontario
Manitoba
Saskatchewan
Alberta
Colombie-Britannique
T.N.-O.
Canada

Canada
(janv. à mai)

Source : Consommation et Corporations Canada
Direction des faillites

ANNEXE
NOTES DOCUMENTAIRES -
GROUPE DE TRAVAIL SUR LE FINANCEMENT AGRICOLE
CONFÉRENCE FÉDÉRALE-PROVINCIALE DES MINISTRES

Toronto - Les 7 et 8 novembre 1984

Recommandation 6.1

Reconduire le Programme spécial d'aide financière à l'agriculture pour deux ans, à l'intention des exploitants en difficulté financière, en acceptant de nouveaux participants et en élargissant la portée des avantages dont jouissent les participants actuels.

Recommandation 6.2

Travailler de concert avec des prêteurs privés en vue de promouvoir le lancement ou l'offre généralisée d'instruments financiers appropriés aux besoins de l'agriculture dans les années 80 et au-delà, ou de prendre ces deux mesures à la fois; par exemple : prêts à long terme à intérêt fixe, hypothèques à plus-value d'intérêt, hypothèques à plus-value partagée, crédits d'exploitation à taux fixe et hypothèques à risques partagés, ainsi qu'une certaine souplesse dans la participation aux marchés des opérations à terme et des options.

Recommandation 6.3

Encourager les prêteurs privés à recourir davantage au Programme d'obligations pour la petite entreprise (OPE) comme mécanisme permettant de restructurer les dettes des exploitants agricoles en difficulté.

Reconduire la période de négociation des obligations pour la petite entreprise au-delà du 31 décembre 1985, jusqu'au 31 décembre 1989, et permettre d'incorporer dans une nouvelle obligation les OPE existants arrivant à échéance avant le 31 décembre 1989;

Recommandation 6.4

Garantir des hypothèques agricoles financées privéement.

Recommandation 6.5

Élaborer un programme de garantie des prêts à moyen terme (de un à cinq ans), à des taux d'intérêt fixes.

Recommandation 6.6

Rationaliser et mettre à jour la Loi sur le crédit aux syndicats agricoles afin d'encourager davantage l'équipement coopératif.

Recommandation 6.7

Améliorer les systèmes d'avances au comptant.

Recommandation 6.8

Élaborer une stratégie nationale portant sur les obligations agricoles. Tout développement ultérieur exige des décisions ministérielles sur les sources et niveaux de financement, sur les utilisations prioritaires, sur les organismes possibles et sur les moyens d'offrir le système.

Recommandation 6.9

Examiner la nécessité d'un programme national de garantie des crédits d'exploitation pour les exploitants en difficulté.

Recommandation 6.10

Préparer une étude de faisabilité sur de nouvelles institutions financières contrôlées par les exploitants, tel le projet de banque agricole.

Recommandation 6.11

Examiner plus avant avec des organismes expérimentés, tels la SCHL, l'élaboration d'un système ayant pour but de protéger contre les augmentations des taux d'intérêt sur les prêts hypothécaires commerciaux.

Recommandation 6.12

Étudier les possibilités d'établissement d'un Fonds enregistré d'épargne-placement agricole.

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 FROM: SAC, [illegible]
 SUBJECT: [illegible]

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INTERPROVINCIAL CONFERENCE OF MINISTERS AND
DEPUTY MINISTERS OF AGRICULTURE

Communiqué

July 22, 1985

St. John's, Newfoundland
July 22, 1985

COMMUNIQUE

All provincial Ministers of Agriculture met today in St. John's for the 35th Annual Meeting of Agriculture Ministers and Deputy Ministers. The Ministers discussed a wide range of issues which are of concern to the agricultural industry, and will continue with federal/provincial meetings during the next two days.

The Ministers expressed a sense of urgency in dealing with the farm financing and taxation concerns currently facing the agricultural industry, and noted that national solutions are required to support provincial initiatives.

The provincial ministers unanimously expressed the need for federal action on many of the recommendations of the Federal-Provincial task force on Agriculture Finance. The Ministers agreed that clarification of the Federal position on these recommendations is necessary.

The main areas of concern to the provincial ministers were lack of action to reduce interest costs to farmers through the Special Farm Financial Assistance Program, and the Agribond program.

The Ministers will be pressing the Federal Minister for clarification on proposed changes to the Bankruptcy Act, Lending policy of the Farm Credit Corporation; and Financial Review Boards

There were also extensive discussions covering Feed Freight Assistance, red meat stabilization, international trade, national marketing boards, chemical pricing, disaster assistance and they agreed to continue their discussions with the Federal Minister on Tuesday.

Concern was expressed that current problems not preclude the conference from looking at longer term programs to maintain our competitive position in world markets.

CONFÉRENCE INTERPROVINCIALE DES MINISTRES ET
SOUS-MINISTRES DE L'AGRICULTURE

Communiqué

le 22 juillet 1985

St. Jean (Terre-Neuve)
Le 22 juillet 1985

COMMUNIQUÉ

Tous les ministres provinciaux de l'Agriculture se sont retrouvés aujourd'hui à St. John's pour la 35e réunion annuelle des ministres et sous-ministres de l'Agriculture. Les ministres ont discuté d'un éventail de questions qui préoccupent le secteur agricole et poursuivront leurs discussions lors des réunions fédérales-provinciales qui auront lieu au cours des deux prochains jours.

Les ministres ont déclaré qu'il était urgent de trouver des solutions aux problèmes auxquels font face actuellement les agriculteurs relativement au financement agricole et au régime fiscal, et ils ont souligné que ces solutions devaient être d'envergure nationale pour appuyer des initiatives provinciales.

Les ministres provinciaux ont tous indiqué qu'il était nécessaire que le gouvernement fédéral prenne des mesures à l'égard de beaucoup des recommandations du comité de travail fédéral-provincial sur le financement agricole. Les ministres ont convenu qu'il fallait éclaircir la position du fédéral en ce qui a trait à ces recommandations.

Les principales préoccupations des ministres provinciaux portaient sur l'absence de mesures visant à réduire les coûts d'intérêts pour les exploitants agricoles, dans le cadre du Programme spécial d'aide financière à l'agriculture et du Programme des obligations agricoles.

Les ministres insisteront auprès du ministre fédéral pour qu'il éclaircisse les modifications que l'on se propose d'apporter à la Loi sur la faillite, à la politique de la Société du crédit agricole en matière de prêts et aux conseils de révision financière.

Les ministres ont aussi eu des discussions approfondies sur l'aide au transport des aliments du bétail, sur la stabilisation du prix de la viande rouge, sur le commerce international, sur les offices nationaux de commercialisation, sur la fixation du prix des produits chimiques et sur l'aide en cas de désastres. Ils ont convenu de poursuivre leurs discussions mardi, avec le ministre fédéral.

On a dit souhaiter que les problèmes actuels n'empêcheraient pas les participants à la conférence d'examiner des programmes à plus long terme destinés à maintenir notre compétitivité sur les marchés mondiaux.

DOCUMENT:

860-167/015

INTERPROVINCIAL CONFERENCE OF MINISTERS
AND DEPUTY MINISTERS OF AGRICULTURE

CONFÉRENCE INTERPROVINCIALE DES MINISTRES
ET SOUS-MINISTRES DE L'AGRICULTURE

St. John's, Newfoundland
July 22, 1985

St-Jean (Terre-Neuve)
Le 22 juillet 1985

LIST OF PUBLIC DOCUMENTS

LISTE DES DOCUMENTS PUBLICS

DOCUMENT NO. DOCUMENT	SOURCE ORIGINE	TITLE TITRE
167/013		/ Communiqué of the Conference / Communiqué de la conférence
167/015		/ List of Public Documents / Liste des documents publics

MEETING OF THE COUNCIL OF PROVINCIAL
ENERGY MINISTERS (CPEM)

Electrical Energy Pricing Alternatives
in Canada

Shawinigan Consultants Inc.



CHARLOTTETOWN, P.E.I.
September 16, 1985

ELECTRIC ENERGY PRICING ALTERNATIVES IN CANADA

Presented to the annual meeting of the
Council of Provincial Energy Ministers
in Charlottetown, Prince Edward Island
September 16, 1985

by G.H. Scruton, Eng.

SHAWINIGAN CONSULTANTS INC.

SUMMARY

In recent years inter-provincial sales of electricity have become complex and controversial. Part of the current problems are due to the pricing system which is in general use throughout Canada and the United States. This system relates the price for surplus energy to the value of the alternate source of electrical generation.

In the western provinces the system of pricing surplus at value is currently working well because the source of alternate energy is coal or natural gas. These commodities are valued near their cost of production.

The eastern provinces had the misfortune to build oil fired plants before the 1973 oil crisis. Since the value of this alternate energy source is set far above the cost of production, the prices of surplus energy sold between provinces in the east are high. They are even higher than the price paid for guaranteed energy within most provinces.

The actual cost of producing surplus energy is much less than that of guaranteed energy because there are no reliability or capacity charges associated with surplus. Therefore, logically the price of surplus interruptible energy sold to another province should be less than the price of guaranteed energy sold within a province.

It may be time to start considering an alternate pricing system for inter-provincial sales of surplus electricity within Canada. Such a system could entail pricing at "cost" rather than at "value". The cost would include a rate of return which would recompense the producing province for the use of the resources while being equitable for the purchasing province.

As has happened already in many countries of the world, the electricity supply system in Canada may be evolving towards some sort of national grid system. This natural result of economic growth echoes the historic development of our provincial utilities from small private companies. The same economies of scale already realized on a provincial level may be available nationally.

INTRODUCTION

For many years electric energy has been sold from one utility to another within Canada. Within the past ten years or so, these sales have become considerably more complex as each utility developed sophisticated ways to improve their financial position and presumably minimize internal tariffs.

This paper reviews current inter-provincial marketing practices, identifies some problems and suggests some general solutions. The main types of electricity sales typically found across the country are outlined, including particular examples and pricing formulas. Because the marketing of surplus energy is perhaps the most controversial issue now, this aspect of inter-provincial sales is emphasized. Both the current system of pricing surplus by market value, and an alternate system of pricing surplus by cost, are then discussed.

There are currently five main types of electricity exchanges between the provinces (Figure 1). They include sales by contract for firm power, sales from a dedicated facility, sales from a generating unit involving joint ownership, sales of surplus energy involving a two way interchange, and sales of surplus energy on an essentially one way basis.

- i) Contract or firm power sales involve the exchange of energy which has the same reliability as in-province firm power sales. Because firm power supply requires an investment in capacity, energy and reliability by the producer, it should command the highest price of any type of electricity sale. The price of the firm power should be related to the cost of supplying the power from the system; either the average cost determined each year or the marginal cost at the time of the initial contract.

The general price structure in Canada for sales of firm energy often includes both a price for the capacity as a function of time; for example, so many dollars per kW per month, and a price for the energy actually consumed, usually in terms of so many cents per kWh.

- ii) A second type of sale involves firm power produced by a generating facility which has been dedicated to the purchaser. The value of this type of energy is lower than regular firm power because the reliability or availability is related to the dedicated facility and not to the producer's entire system. Thus the price of firm power from a dedicated facility only involves the cost of capacity and energy, and like regular firm power, often includes a price for the capacity made available and the energy actually consumed.

An example of this type of exchange is the sale of power from Churchill Falls in Labrador to Hydro Quebec.

- iii) Occasionally two or more utilities share the construction cost and operating cost of a generating unit built within the franchise area of one of the utilities. The output is shared in the same proportion as ownership, and the costs are apportioned accordingly. This form of exchange also involves the controversial subject of wheeling.

This is the form of partnership between New Brunswick Power and Maritime Electric Company Limited (MECL) concerning Dalhousie No. 2 in New Brunswick.

- iv) When neighbouring utilities plan and operate their systems jointly, a fourth type of exchange can take place. This is economy interchange and occurs when energy flows both ways between the participating utilities for combined least cost generation. Such an exchange tends to minimize the investment required by both utilities by requiring less reserve and by encouraging larger units. Each utility maintains adequate capacity generating facilities to meet its own load including reserve assistance from the other participating utility. The energy is usually priced using a split savings formula.

An example is the exchange between New Brunswick Power and Nova Scotia Power. The exchange from New Brunswick Power to Maritime Electric Company for the energy in excess of that generated by Dalhousie No. 2 is also classed as this type of sale.

- v) A fifth type of electricity sales occurs when one utility that has energy surplus to its needs sells the surplus to a neighbouring utility who can use this energy to replace fossil fuel. Surplus energy sales are a characteristic of dominant hydro generating systems where planning is based on a low flow sequence that seldom occurs, where plants are built in large increments, and where there is difficulty in matching generation with load growth.

Since the amount of surplus energy available varies continually, the purchasing utility requires sufficient generating capacity of its own to satisfy its load when the selling utility's surplus is not available. This type of energy sale is interruptible and entails no investment of reliability or dedicated capacity by the producer. Thus in a hydro system the incremental cost of surplus energy production is negligible.

Due to its low reliability and low incremental cost, surplus energy should logically command a price which is lower than that of other types of electricity sales. However, the pricing of surplus energy is usually based on the cost of the alternative generation available to the purchaser and lately this cost has been high.

Examples of this common type of exchange are the sales from Manitoba Hydro to Saskatchewan Power and Ontario Hydro, and from Hydro Quebec to Ontario Hydro and New Brunswick Power.

3. CURRENT PRICING OF INTER-PROVINCIAL ENERGY IN CANADA

Electrical energy is being transferred across provincial borders in greater amounts each year. While each specific agreement differs in detail, there do appear to be some characteristics of energy sales which are typical.

There are essentially two ways of pricing a commodity:

- i) by its value to the buyer, and
- ii) by its cost of production.

In Canada both methods are used to price electricity. Firm power is usually priced at its cost of production, including the costs of capacity investment, production and reliability. Surplus power and economy energy are often priced in terms of their value to the potential buyer. This may involve the cost of production by the buyer's own facilities or the cost of purchasing from another source.

Some of the general characteristics of pricing in Canada can be found in the data compiled every year by Stats-Can.(Ref.1). Figures 2 and 3 summarize the inter-provincial energy receipts and deliveries in 1983, which is the most recent year for which complete data is available. These figures do not account for imports or exports, the generation, sales or purchases by industries, or the exchange of energy not involving financial transactions.

Each province's total purchases (Figure 2) from other provinces are shown in GWh and dollars. The deliveries (Figure 3) are broken down into firm and secondary categories. If the large volume that Newfoundland sold to Quebec is neglected, it appears that two thirds of the energy sold was surplus secondary energy.

This data can be used to estimate how much energy is flowing across each inter-provincial border by considering our country's east-west geography. Figure 4 presents the information in terms of the individual provinces and territories. Here the relative volume of sales can be appreciated. For example, Ontario buys large amounts of energy from Quebec while Saskatchewan sells very little to Alberta.

Just as we know the volumes of inter-provincial sales, we can also estimate the average price of each sale from the Stats-Can data. Figure 5 shows how this average price varied across Canada during 1983. These prices are averages only, and will not be the same as those quoted in the actual formal agreements between utilities. Generally, it can be seen that the price of energy varies considerably throughout the country.

Surplus energy generally is priced by value and not by cost. The value is a function of the alternate thermal fuel and where the average price of energy sales is relatively high, we can see that the cost of fuel is high. For example, it appears that Quebec sold energy to Ontario at about 1.45 cts/kWh while it sold similar energy to New Brunswick at about 2.79 cts/kWh. This occurred because New Brunswick's alternative was to burn relatively expensive oil, while Ontario's alternative was to burn less expensive coal.

The pricing formulas typically in use can be expressed as follows:

- for economy interchange
price = 0.5x (incremental production cost of producing utility plus incremental production cost of receiving utility)

- for hydro surplus from Hydro Quebec

Price = $0.80x$ (incremental production cost in the receiving system).

This pricing methodology recognizes that part of the fixed cost for a hydro system is energy related: i.e. the cost of producing straight energy is not zero.

Provinces that rely on oil-fired generating capacity tend to pay more to surplus energy producers than provinces that rely on other fossil fuels such as coal. Since oil itself has been trading at value rather than cost since 1973, the value pricing system now penalizes utilities who had the misfortune to invest in oil-fired units prior to 1973. This is particularly important east of Quebec where the oil-fired installations are large, where there is a ready availability of surplus energy from Quebec for some time into the future, and where it is unlikely that sufficient new generation will be built to change the use of oil as the pricing determinant.

West of Quebec the availability of less expensive coal and natural gas have tended to make sales of surplus more equitable. Although here as well, surplus energy is traded at value, the value of these fuels is closer to the cost of energy production.

Figure 6 has been prepared from the Stats-Can data shown in Figures 2 and 3 and from the rates to large industrial customers quoted by most of the major utilities in 1983. The left side of the figure shows the average price of both firm and secondary surplus energy sold from each province. As noted above the cost of producing firm energy is more than the cost of producing secondary energy. Prices throughout most of Canada tend to reflect this relationship. It may also be noted that inter-provincial prices of secondary energy in the East tend to be much higher than in the West.

The middle section of Figure 6 gives the effective rates to large industrial customers in most provinces. The demand charge has been transformed to cents per kWh by assuming a 60% load factor. With the exception of the TransAlta Utilities Corporation the energy charge is always more than the demand charge.

Purchasing utilities have many of the same characteristics as large industrial customers. The energy portion of the rate to industries is a good proxy for the cost of producing pure energy on a guaranteed basis. That is, the industrial customer has to pay a portion of the costs of maintaining the reliability for the service he requires.

Secondary energy sold out of province has no reliability cost since it is interruptible. The cost of its production is very low. This is effectively recognized in the West where surplus secondary energy is generally sold at a price lower than the price of energy to industry. In the East, the value of oil upsets this logical price structure, and surplus energy sells for more than the price to industry. This can be seen in the last column of Figure 6.

Figure 7 incorporates the average price of surplus energy determined in Figure 5 with the large industrial rates of Figure 6. Again it appears that in Western Canada the prices of surplus energy were all lower than the price of firm energy sold internally to large industries. The exception was the price Alberta paid for firm power produced by Saskatchewan Power.

Energy purchased by Ontario Hydro in 1983 was bought at prices mid way between the energy charges to Ontario's large customers and those to the producing utilities' large customers. This appears to have been a rational pricing system.

The same type of energy sold to Ontario by Hydro Quebec was sold to New Brunswick at almost double the price, because of New Brunswick's oil fired alternative. New Brunswick has been able to minimize the energy charge to its customers by selling its surplus to Nova Scotia, Prince Edward Island and the United States using the same value pricing system. This resulted in relatively high prices to the two purchasing provinces.

The types of surplus energy sales made in Canada, how they are typically priced and some of the problems associated with value pricing have been reviewed. An alternative pricing system involving the cost of the electrical service can now be examined.

What are the main questions that must be considered in establishing the cost of supplying surplus energy? They include:

- should cost be the average system cost or the marginal system cost?
- how should costs be allocated to capacity and energy?
- what return should the selling utility earn?

i) Average System Cost or Marginal System Cost?

In Canada and in the United States customers of electric utilities are all treated as new customers and no customer has acquired rights. This is an equitable system where large industrial customers all pay the same rate to the utility, and that rate is a function of the cost of production. The most recent industrial customer does not pay more for his capacity and energy than the oldest industrial customer; i.e. he doesn't pay at the margin.

We've already seen that most of the surplus energy currently being sold between provinces is interruptible hydro energy. The producing provinces count on selling their surplus when they make long term plans involving investments and finances. Similarly, the purchasing provinces include expected future purchases in their plans for future generation installations. Both parties of the transaction usually expect to continue dealing with each other well into the foreseeable future.

This is evidenced by the construction of high voltage transmission lines connecting consumers with producers. Thus in effect, the purchasing utilities become customers of the selling utilities, and like regular industrial customers, they buy energy produced by both old and new generating plants. Therefore, like large industrial customers, purchasing utilities could therefore be charged as a function of the average cost of production.

ii) Estimating the Cost of Capacity and Energy

Power has two components - capacity and energy - and they are inseparable. Each requires the other. In economic terms capacity and energy are considered as joint products (Ref.2). As such, the allocation of costs between the two components cannot be made exactly. Many methods of allocating costs have been developed in order to price power to customers having different load factors. Traditionally costs are allocated by attributing fixed costs to capacity sales and variable costs to energy sales but this is not necessarily correct.

Figures 8 and 9 show how fixed and variable costs relate as the system load factor changes. The hypothetical system is made up of the components required to yield the least cost system for varying load factors with the supply coming from a mix of nuclear, oil fired and gas turbine type plants. Figure 8 indicates how peak, intermediate and base energy may vary with different load factors. Figure 9 shows how the variable and fixed costs vary with the load factor. In this case intermediate energy has a value of four times that of the base energy, while the peak energy value is six times the base energy value.

The figure indicates that as the load factor increases the proportion of fixed charges increase and the proportion of variable costs decrease. As the load factor reduces, the fixed charges decrease and the variable charges increase.

Consequently, if it is desirable that the price for power be based on one price for capacity and one price for energy, the price for energy should include some of the fixed costs. This would ensure that the producing utility covers its real costs incurred by selling to another utility.

Ontario Hydro recently developed a method called the "composite peaking plant (CPP)" for allocating costs to capacity and energy (Ref.3). The method was reviewed by the Ontario Energy Board which accepted the method as being "well founded and logical". For the Ontario Hydro system, the CPP method of allocating costs results in costs at the generating level being allocated at about 40% to capacity and 60% to energy. If costs are allocated in Ontario using the usual fixed/variable costs equals capacity/energy costs, the cost allocation proportions would be reversed.

Since most of the inter-provincial sales are interruptible, the receiving utilities need to ensure their local supply by maintaining adequate capacity, and therefore the receiving utilities generally only want to buy energy. The price for this energy should contain some allowance for the producers' fixed costs. As found by Ontario Hydro in its recent study, the price of this surplus energy sales could be 60% of the total power cost at the high voltage supply level.

The Ontario Hydro system is a good proxy for a typical system as it includes all the basic forms of generation-hydro (base and peak), nuclear and fossil-fueled thermal (base and peak). However, the actual proportion of costs attributable to surplus energy will vary in each utility.

iii) Rate of Return on Investments used in Inter-Provincial Sales

The price paid for a commodity must include an adequate return on investment for the producer. This return should contain a component which recognizes that the resources of the selling province are being used for the benefit of the purchasing province. These resources include power plant sites, reservoirs and transmission rights-of-way.

A rational approach to an equitable rate of return can be established by applying a mark-up to the return which could be earned if the energy was consumed within the province.

Tariffs to various customers are usually considered fair if the return, as calculated by a cost of service study, is between 80% and 120% of the desired return (Ref.4). Therefore a minimum rate of return on external sales could be 120% of the desired rate on internal sales. This would ensure a good return for the selling province.

Studies of long term investments in Canada have shown that the ratio of the desired social cost or return to the country to the actual borrowing costs of investors is about 1.6 to 1 (Ref.5). This markup reflects taxes of various types which are in effect the yield to society. Since purchasing utilities tend to become long term customers of energy, it seems appropriate to expect a maximum rate of return on external sales of about 160% of the desired rate on internal sales. This would serve to protect the purchasing utility from inequitable pricing systems and would yield a reasonable "social" return to the producing utility.

In order to ensure that the producing utilities recover all costs with a good return, it may be necessary for the consuming utility to buy surplus energy whenever it is available and it can be used. This may entail a contractual obligation which would tend to maximize the economies to the peoples of both provinces.

CONCLUSIONS

The issue of inter-provincial pricing systems can easily be reduced to a more philosophical question about fairness. Fairness relates to how the provinces see themselves within the Canadian context:

- are all Canadians to be treated equally or are some Canadians to be treated preferentially?
- should we allow the arbitrarily high value of oil to create inequality within our country?
- should we be trying to minimize the costs of electricity to the people of Canada as a whole or to people of our individual regions?

The current split-savings formula of value pricing, as applied to essentially one way sales of energy, encourages regional disparity.

Ideally an alternate system could be developed which would involve a rational and equitable surplus energy pricing structure, independent of the vagaries of international oil prices. The alternative cost pricing system outlined above is not ideal but it does have some advantages:

- the low cost surplus hydro energy currently available within Canada would be shared by more Canadians,
- the selling utility would receive a reasonable rate of return which would guarantee recovery of its costs and provide a 'social' return for the use of its resources, and

- the purchasing utility would be able to plan its own projected finances based on the more rational notion of production costs rather than on the volatility of the oil market.

Perhaps it's time for Canadians to think about another system. The provincial utilities grew because of problems associated with the small local private utilities. Should they now be moving toward a national grid, as is being done more and more in other countries? The economics of scale which were realized at a provincial level may also be realized at a national level.

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FIGURE 1

COMMON TYPE OF INTER-PROVINCIAL ELECTRICITY SALES
TYPES COURANTS DE VENTES D'ELECTRICITÉ INTER-PROVINCIALES

1. FIRM POWER BY CONTRACT
PUISSANCE SOUSCRITE
2. FIRM POWER FROM A DEDICATED FACILITY
PUISSANCE SOUSCRITE DE SOURCE PRÉFÉRENTIELLE
3. FIRM POWER BY UNIT PARTICIPATION
PUISSANCE GARANTIE PAR PARTICIPATION CONJOINTE
4. SURPLUS ENERGY BY ECONOMY INTERCHANGE
SURPLUS D'ÉNERGIE PAR INTERCONNEXION
5. SURPLUS ENERGY WHEN AVAILABLE
SURPLUS D'ÉNERGIE QUAND DISPONIBLE

INTER-PROVINCIAL TRANSFERS OF ELECTRIC ENERGY IN 1983
TRANSFERTS D'ENERGIE ELECTRIQUE ENTRE PROVINCES EN 1983
(Stat-Can - Cat. 57-202)

RECEIVED FROM OTHER PROVINCES
RECUE D'AUTRES PROVINCES

PROVINCE	PURCHASES ACHETEE		EXCHANGE ENTENTE	TOTAL	
	GW.h	\$x1000		GW.h	\$x1000
B.C./C.B.	43	83	2	46	83
Alta.	138	1,696	28	166	1,696
Sask.	344	5,806	1,106	1,450	5,806
Man.	100	782	1,121	1,222	782
Ont.	6,311	90,885	22	6,333	90,885
Que.	31,188	88,879	53	31,241	88,879
N.B./N.-B.	4,023	114,814	69	4,092	114,814
N.S./N.-E.	672	21,758	65	737	21,758
P.E.I./I.P.E.	390	20,431	129	519	20,431
Nfld./T.-N.	0	0	0	0	0
CANADA	43,211	345,134	2,595	45,805	345,134

INTER-PROVINCIAL TRANSFERS OF ELECTRIC ENERGY IN 1983
TRANSFERTS D'ENERGIE ELECTRIQUE ENTRE PROVINCES EN 1983
(Stat-Can - Cat. 57-202)

TOTAL ENERGY DELIVERIES TO OTHER PROVINCES
ENERGIE TOTALE LIVREE AUX AUTRES PROVINCES

PROVINCE	FIRM SOUSCRITES		SECONDARY EXCEDENTAIRE		TOTAL (F+S) TOTAL (S+E)		EXCHANGE ENTENTE		TOTAL	
	GW.h	\$x1000	GW.h	\$x1000	GW.h	\$x1000	GW.h	\$x1000	GW.h	\$x1000
B.C./C.B.	5	163	130	1,399	135	1,562	28		163	1,562
Alta.	0	14	43	69	43	83	2		46	83
Sask.	3	134	100	782	103	916	1,107		1,211	916
Man.	225	5,542	1,057	13,062	1,281	18,604	1,123		2,405	18,604
Ont.	0	0	0	0	0	0	65		65	0
Que.	3,684	54,197	5,656	134,641	9,340	188,838	9		9,349	188,838
N.B./N.-B.	12	1,167	1,051	41,022	1,063	42,189	196		1,258	42,189
N.S./N.-E.	0	0	57	4,063	57	4,063	64		121	4,063
P.E.I./I.P.E.	0	0	0	0	0	0	0		0	0
Nfld./T.-N.	31,188	88,879	0	0	31,188	88,879	0		31,188	88,879
CANADA	35,117	150,096	8,094	195,038	43,211	345,134	2,595		45,805	345,134

INTER-PROVINCIAL SALES OF ELECTRIC ENERGY IN 1983
VENTES D'ENERGIE ELECTRIQUE ENTRE PROVINCES EN 1983

FIRM AND SECONDARY ENERGY (GW.h)
ENERGIE SOUSCRITE ET EXCEDENTAIRE (GW.h)

DELIVERIES TO LIVREE A	B.C. C.B.	Alta.	Sask.	Man.	Ont.	Que.	N.B. N.-B.	N.S. N.-E.	P.E.I. I.P.E.	Nfld. T.-N.
RECEIVED FROM RECUE DE										
B.C./C.B.	-	135								
Alta.	43	-	0							
Sask.		3	-	100						
Man.			344	-	938					
Ont.				0	-	0				
Que.					5,374	-	3,966			0
N.B./N.-B.						0	-	672	390	
N.S./N.-E.							57	-		
P.E.I./I.P.E.							0			
Nfld./T.-N.						31,188				

CONFERENCE OF PROVINCIAL ENERGY MINISTERS
SHAWINIGAN CONSULTANTS INC.

FIGURE 5

INTER-PROVINCIAL SALES OF ELECTRIC ENERGY IN 1983
VENTES D'ENERGIE ELECTRIQUE ENTRE PROVINCES EN 1983

AVERAGE SALE PRICE (cents/kw.h)
PRIX DE VENTE MOYEN (cents/kw.h)

DELIVERIES TO LIVREE A	B.C. C.B.	Alta.	Sask.	Man.	Ont.	Que.	N.B. N.-B.	N.S. N.-E.	P.E.I. I.P.E.	Nfld. T.-N.
RECEIVED FROM RECUE DE										
B.C./C.B.	-	1.16								
Alta.	0.19	-	N/A							
Sask.		4.37	-	0.78						
Man.			1.69	-	1.37					
Ont.				N/A	-	N/A				
Que.					1.45	-	2.79			N/A
N.B./N.-B.						N/A	-	3.24	5.23	
N.S./N.-E.							7.15	-		
P.E.I./I.P.E.							N/A		-	
Nfld./T.-N.						0.28				-

Figure 7

D	Demand charge to large industries in cents/kWh at 60% load factor. <i>Composante puissance aux industries lourdes en cents/kWh - Facteur de charge 60%</i>
E	Energy charge to large industries in cents/kWh. <i>Composante énergie aux industries lourdes en cents/kWh</i>
A	Average rate to large industries in cents/kWh. <i>Prix moyen aux industries lourdes en cents/kWh</i>
1.5	Average price in cents/kWh of surplus energy sales. <i>Prix moyen en cents/kWh de l'énergie excédentaire</i>

Figure 8

LOAD DURATION CURVES FOR A
HYPOTHETICAL SYSTEM

COURBES DES PUISSANCES CLASSÉES
D'UN SYSTÈME FICTIF

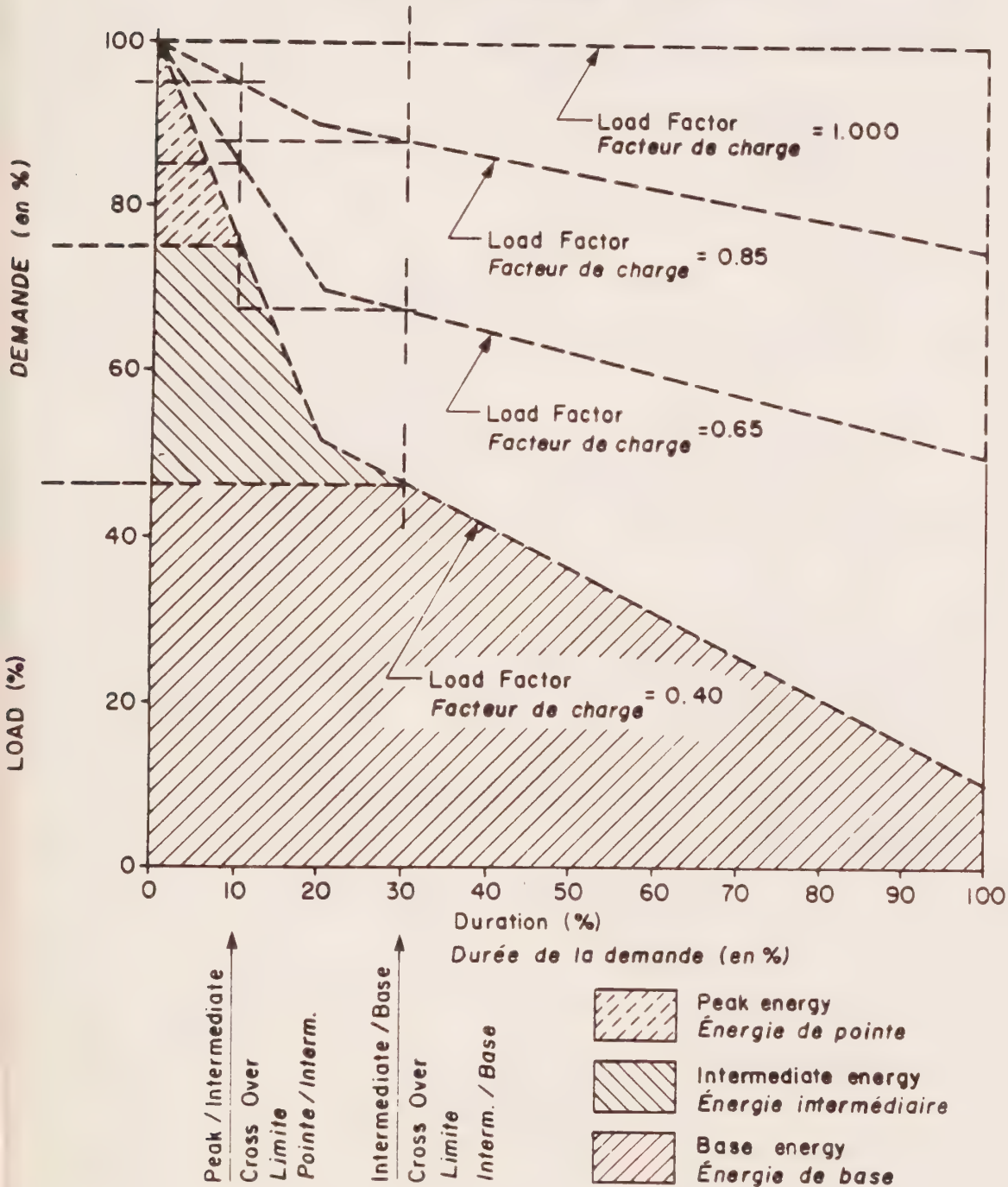
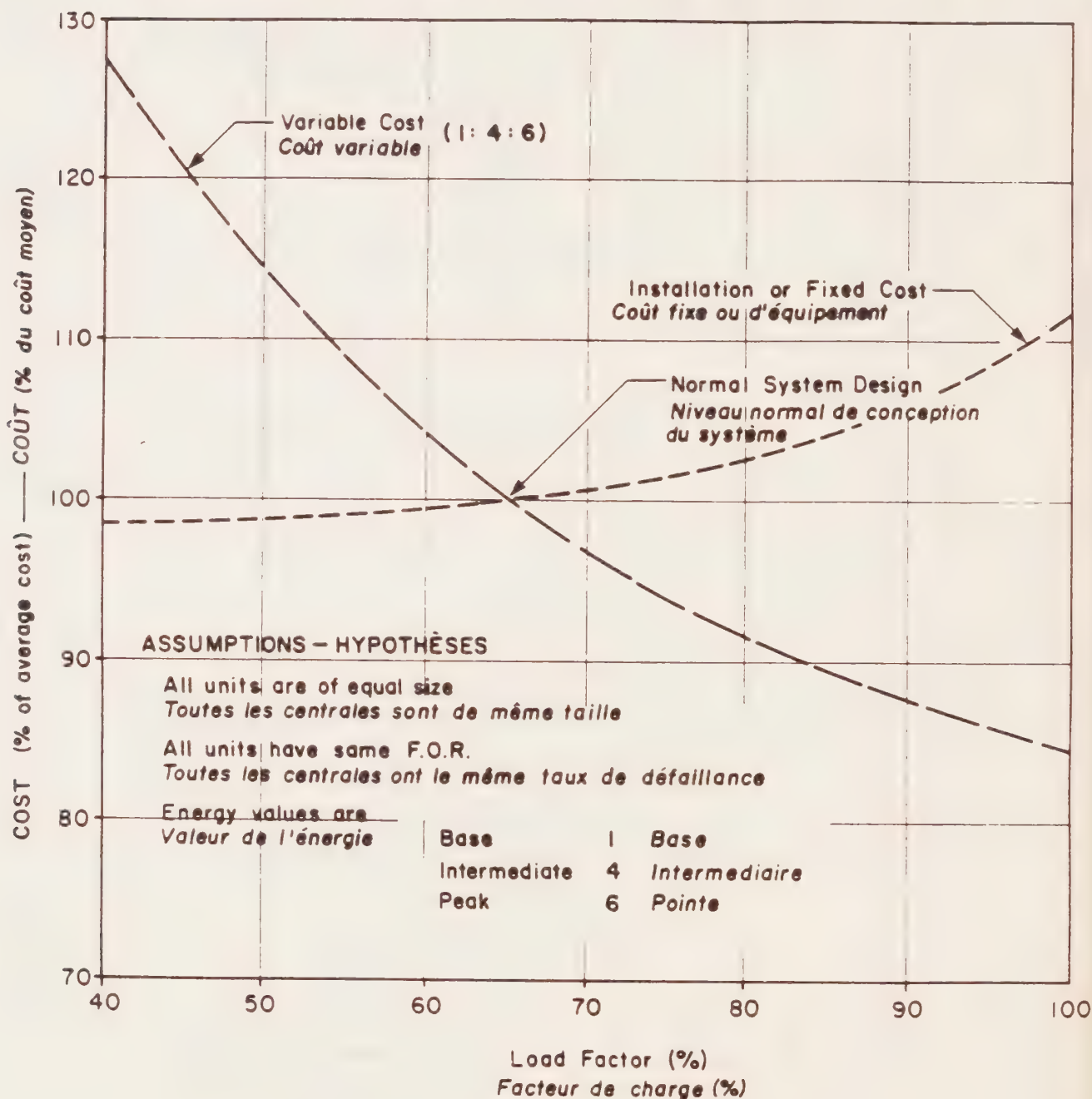


Figure 9

SYSTEM COSTS AS A FUNCTION OF LOAD FACTOR

ÉVALUATION DES COÛTS DE FOURNITURE EN FONCTION DU FACTEUR DE CHARGE



RÉUNION DU CONSEIL DES MINISTRES PROVINCIAUX
DE L'ÉNERGIE (CMPE)

Les approches de la tarification de
l'énergie électrique au Canada

Experts-conseils Shawinigan Inc.

CHARLOTTETOWN (I-du-P.-É)
Le 16 septembre 1985

LES APPROCHES DE LA TARIFICATION
DE L'ÉNERGIE ÉLECTRIQUE AU CANADA

Présenté à la Conférence Annuelle
des Ministres Provinciaux de l'Énergie
tenue à Charlottown, Ile du Prince Edouard
Le 16 septembre 1985

SOMMAIRE

Au cours des dernières années, les ventes d'énergie électrique inter-provinciales sont devenues des transactions complexes et sujettes à discussions. Ces discussions trouvent leurs sources, pour une large part, dans les principes généraux de tarification utilisés à la fois au Canada et aux États-Unis. Ces principes généraux associent le prix de l'énergie excédentaire achetée au coût de la production ainsi remplacée.

Pour les provinces de l'Ouest, ce système fonctionne relativement bien puisque l'énergie remplacée est produite à partir du charbon ou du gaz naturel. La valeur actuelle de cette énergie est en effet proche de son coût de production.

Par contre, les provinces de l'Est ont eu la malchance de mettre en service des centrales diesel avant la crise pétrolière de 1973. Comme la valeur de l'énergie de remplacement est de beaucoup supérieure à son coût de production, le prix de l'énergie excédentaire vendue entre les provinces de l'Est est élevé; il est même supérieur aux prix payés pour l'énergie garantie dans la plupart des provinces.

Le coût effectif de production de l'énergie excédentaire est bien inférieur au coût de production de l'énergie garantie puisque, pour cette production, ni la puissance, ni la fiabilité ne sont assurées. Pour ces raisons, le prix de l'énergie excédentaire (dont la fourniture peut être interrompue) qui est vendue à une autre province devrait être inférieur au prix de l'énergie garantie dans la province productrice.

Il est peut être temps de réfléchir à une autre approche à la tarification de l'énergie électrique excédentaire vendue entre provinces canadiennes. Cette autre approche pourrait considérer des prix basés sur le "coût" plutôt que sur la "valeur". Ce coût, incluerait un rendement reconnaissant que la province productrice utilise ses propres ressources, tout en demeurant juste pour la province acheteuse.

À l'instar d'autres pays, les systèmes de production et de distribution d'électricité au Canada devraient probablement évoluer vers un réseau national. Cette conséquence logique de la croissance économique rappelle en fait l'intégration passée des petits producteurs privés en sociétés oeuvrant au niveau provincial. Ainsi, des économies d'échelle déjà réalisées au niveau provincial pourraient être obtenues au niveau national.

1. INTRODUCTION

Au Canada, les ventes d'énergie électrique entre sociétés productrices s'effectuent depuis de nombreuses années. Ces dix dernières années, les transactions sont devenues très complexes, chaque société utilisant des méthodes de plus en plus sophistiquées pour améliorer sa situation financière et vraisemblablement pour minimiser ses tarifs internes.

Ce mémoire passe en revue les diverses méthodes de mise en marché utilisées actuellement entre provinces, identifie les problèmes et propose quelques solutions. D'abord, les différents types de ventes d'électricité généralement effectués au Canada sont décrits; quelques exemples sont mentionnés avec des formules de calcul des prix. Un accent particulier est mis sur les ventes d'énergie excédentaire entre provinces puisqu'il s'agit d'une question très controversée actuellement. Ensuite, les principes actuels de tarification qui proposent des tarifs pour l'énergie excédentaire basés sur la "valeur" de l'énergie sont discutés et une approche de remplacement s'appuyant sur les "coûts" est présentée.

2. NATURE DES VENTES INTER-PROVINCIALES D'ÉLECTRICITÉ

On peut distinguer actuellement cinq types de ventes d'électricité entre les provinces canadiennes (figure 1). Il s'agit de la vente d'énergie garantie en vertu d'un contrat, de la vente de la production d'une centrale précise, de la vente de l'énergie produite d'une centrale en participation conjointe, de la vente et de l'achat réciproques d'énergie excédentaire, et enfin, de la vente d'énergie excédentaire sans achat réciproque.

- i) L'énergie garantie ou souscrite échangée entre provinces a la même fiabilité que celle vendue à l'intérieur de la province. Puisqu'à cette énergie correspondent des investissements à la fois pour la puissance, l'énergie et la fiabilité, son prix devrait être le plus élevé de tous les types d'énergie électrique. Le prix de cette énergie garantie devrait être lié au coût de production dans l'ensemble du réseau, c'est-à-dire soit le coût moyen calculé chaque année, soit le coût marginal estimé au moment de la signature du contrat.

D'une façon générale, au Canada, les tarifs de l'énergie garantie incluent à la fois une prime de puissance par unité de temps (exemple: tant de dollars/kW/mois) et une prime pour l'énergie consommée (en général, tant de cents/kWh).

- ii) Un deuxième type de ventes d'énergie garantie entre provinces correspond à la vente de la production d'une centrale précise. La valeur d'une telle énergie est inférieure à celle de l'énergie ferme puisque sa fiabilité et sa disponibilité dépendent de cette centrale et non pas de l'ensemble du réseau du vendeur. Le prix de ce type d'énergie garantie ne représente que le coût de la puissance et celui de l'énergie; comme pour le premier type d'énergie garantie le tarif inclus généralement une composante pour la puissance offerte et une composante pour l'énergie consommée.

Les ventes de la production de Churchill Falls au Labrador à Hydro-Québec illustrent ce type de ventes.

- iii) Il arrive que deux sociétés (ou plus) s'associent pour la construction et la gestion d'une centrale située sur le territoire de l'une d'elles. Les coûts sont répartis en fonction de la production qu'elle partage selon les apports respectifs de chaque partenaire. Ce type d'échange fait également intervenir la question controversée des coûts du transit.

L'association de New Brunswick Power et Maritime Electric Company Limited (MECL) dans la centrale de Dalhousie n° 2 correspond à ce type de ventes.

- iv) Un quatrième type d'échange intervient lorsque des sociétés de production et distribution d'électricité collaborent dans la planification et la gestion de leur réseau. On parle d'échange lorsqu'il y a alternativement achat et vente d'énergie de façon à minimiser les coûts totaux des deux systèmes. Un tel échange tend à réduire les investissements de chacune des parties en réduisant leurs réserves respectives et en permettant la mise en service d'unités de plus grande taille. Chaque société maintient une capacité de production lui permettant de faire face à sa propre demande compte tenu des réserves disponibles chez le voisin. En général, le prix de l'énergie échangée est basé sur le principe du partage des économies réalisées.

Les échanges d'énergie entre New Brunswick Power et Nova Scotia Power correspondent à cette catégorie. Celles effectuées par New Brunswick Power à Maritime Electric Company (au-delà de la production de Dalhousie n°2) sont également de ce type.

- v) Le cinquième type de ventes d'électricité intervient lorsqu'une société, ayant une production supérieure à ses besoins, vend ces surplus à une autre société qui peut ainsi réduire sa consommation de combustibles fossiles. Ces ventes d'énergie excédentaire sont caractéristiques des réseaux à dominante hydraulique où la planification est effectuée à partir d'une séquence de débits minimum (qui se présente rarement) et où l'ajustement de la production aux besoins est d'autant plus difficile que les centrales hydro-électriques sont généralement d'une grande taille.

Puisque les surplus disponibles varient continuellement, l'acheteur doit maintenir une capacité de production correspondant à sa propre demande au cas où les surplus ne seraient plus disponibles. La fourniture de l'énergie achetée peut être interrompue et n'entraîne pas, pour le vendeur, d'investissement pour la fiabilité ni l'affectation à ce client d'une centrale particulière. Ainsi dans le cas d'un réseau essentiellement hydraulique le coût additionnel de la production de l'énergie excédentaire est négligeable.

A cause de sa faible fiabilité et du coût bas de la production additionnelle, le prix de l'énergie excédentaire devrait normalement être inférieur à celui des autres types d'énergie. Cependant, ce prix est généralement basé sur le coût de remplacement de cette production à partir du réseau de l'acheteur. Dernièrement ce coût de remplacement a été élevé.

Les ventes de Manitoba Hydro à Saskatchewan Power ainsi que celles d'Hydro-Québec à Ontario Hydro et New-Brunswick Power sont des exemples de ce type de ventes.

3. TARIFICATION ACTUELLE DES VENTE D'ÉNERGIE ÉLECTRIQUE ENTRE PROVINCES CANADIENNES

Tous les ans, les transferts d'énergie électrique inter-provinciaux augmentent. Bien que chaque situation ait ses aspects particuliers, ces transactions ont en commun un certain nombre de caractéristiques.

Globalement, la détermination du prix d'un bien quelconque peut être effectuée:

- i) En considérant la valeur qu'accorde l'acheteur à ce bien.
- ii) En considérant son coût de production.

Au Canada, ces deux approches sont utilisées pour établir le prix de l'électricité. Le prix de l'énergie garantie est généralement basé sur son coût total de production incluant les investissements nécessaires à la puissance, les autres coûts de production et le coût de la fiabilité. Les prix des surplus de puissance et d'énergie sont par contre généralement basés sur la valeur que lui donne l'acheteur potentiel. Cette valeur peut être le coût qu'aurait encouru l'acheteur s'il avait dû produire lui-même cette énergie ou son prix d'achat d'une autre source.

Quelques unes des caractéristiques principales de la tarification actuelle au Canada peuvent être obtenues des données de Statistiques Canada (référence 1). Les figures 2 et 3 résument les transferts d'énergie inter-provinciaux 1983, dernière année pour laquelle une série complète est disponible. Ces chiffres ne prennent pas en compte les importations et les exportations, la production, les ventes et achats effectués directement par les industries de même que les échanges d'énergie n'entraînant pas de compensation financière.

Pour 1983, le total des achats de chaque province (en GWh et en dollars) est indiqué dans la figure 2. Dans la figure 3, les ventes sont ventilées entre énergie garantie et énergie secondaire.

En excluant l'important volume vendu par Terre-Neuve au Québec, on remarque que les ventes d'énergie excédentaire représentent les deux tiers des ventes d'énergie entre provinces.

À partir de ces données et en procédant de l'est vers l'ouest, on peut estimer les transferts d'énergie entre provinces. La figure 4 présente ces données par province et territoire. Ceci permet, entre autres, de prendre conscience des volumes vendus. Ainsi, l'Ontario achète des grandes quantités d'énergie du Québec tandis que la Saskatchewan en vend très peu à l'Alberta.

D'une manière identique et à partir des données de Statistiques Canada, on peut estimer les prix moyens. La figure 5 illustre les variations de prix au Canada pour l'année 1983. Il s'agit cependant de prix moyens probablement différents de ceux figurant dans les contrats. Globalement, on constate que le prix de l'énergie varie considérablement au Canada.

Tel qu'indiqué précédemment, le prix de l'énergie excédentaire dépend généralement du coût de la production dans une centrale thermique. On remarque donc que lorsque le coût de l'énergie excédentaire vendue est élevé, le coût du combustible de remplacement est élevé. On note par exemple que le Québec a vendu de l'énergie à l'Ontario à environ 1,45 cent/kWh tandis qu'il vendait le même type d'énergie au Nouveau-Brunswick à environ 2,79 cents/kWh. Ceci se produit parce que le Nouveau-Brunswick emploierait des produits pétroliers relativement chers s'il ne bénéficiait pas de l'énergie excédentaire du Québec, tandis que l'Ontario utiliserait du charbon qui est meilleur marché.

On peut décrire les formules de prix généralement utilisées de la façon suivante:

- Pour les échanges d'énergie excédentaire:

Prix = 50% (coût alternatif de production par l'acheteur + coût additionnel de production par le vendeur).

- Pour l'énergie excédentaire d'Hydro-Québec:

Prix = 80% (du coût alternatif de production par l'acheteur).

La formule précédente reconnaît qu'une partie des coûts fixes, dans un système basé sur l'hydraulique, est liée à la production d'énergie, ou dit autrement, qu'il en coûte quelque chose pour produire uniquement de l'énergie.

Les provinces ayant des centrales utilisant les produits pétroliers, paient en général plus que celles utilisant d'autres combustibles fossiles tel le charbon. Puisque depuis 1973, le prix du pétrole reflète sa valeur et non son coût, un système de tarification actuel basé sur la valeur de l'énergie pénalise les sociétés ayant eu la malchance d'investir dans des centrales diesel avant 1973. Ceci est particulièrement vrai dans les provinces à l'est du Québec où ce type d'installation est très fréquent alors que les surplus actuels d'origine hydraulique produits au Québec devraient demeurer dans le futur et qu'il est peu probable que la mise en service de nouvelles centrales viennent modifier le rôle des produits pétroliers dans la détermination des prix.

À l'ouest du Québec, la disponibilité en charbon et gaz naturel relativement bon marché a permis au prix de l'énergie excédentaire de demeurer plus "équitable" quoique ici aussi le prix de l'énergie excédentaire reflète sa valeur. Dans ce cas cependant, l'écart entre la valeur et le coût est relativement moindre.

La figure 6 utilise les données de Statistiques Canada présentées dans les figures 2 et 3 et inclut les tarifs 1983 appliqués aux grandes industries. La partie gauche de cette figure indique le prix moyen de l'énergie garantie et de l'énergie excédentaire vendue par chaque province. Tel qu'indiqué plus haut, le coût de production de l'énergie garantie est supérieur au coût de production de l'énergie secondaire et les prix pratiqués reflètent en général cette réalité. On note également que les prix moyens de l'énergie secondaire sont en général plus élevés dans l'est du pays que dans l'ouest.

La partie centrale de la figure 6 donne le prix moyen réel demandé aux grandes industries dans la plupart des provinces. La prime de puissance a été transformée en cents/kWh sur la base d'un facteur de charge de 60%. À l'exception de la TransAlta Utilities Corporation, la composante énergie est en général plus élevée que la composante puissance.

Les sociétés de production et distribution qui achètent de l'énergie électrique ont plusieurs caractéristiques en commun avec les gros abonnés industriels. La composante énergie payée par l'industrie peut donc être considérée comme un bon indicateur du coût de la production de l'énergie garantie. L'abonné industriel doit, en effet, absorber une partie des coûts de la fiabilité qu'il exige.

L'énergie secondaire vendue à une autre province n'a pas de coût de fiabilité puisque sa fourniture peut être interrompue. Son coût de production est donc très faible. Cette réalité est généralement reconnue dans l'Ouest du pays puisque l'énergie excédentaire est, en général, vendue à un prix inférieur à celui de l'énergie vendue à l'industrie. Dans l'est, le prix du pétrole détruit cette logique et l'énergie excédentaire se vend à un prix supérieur à celui de l'énergie à l'industrie. La dernière colonne de la figure 6 met ceci en évidence.

La figure 7 juxtapose le prix moyen de l'énergie excédentaire présenté dans la figure 5 aux tarifs des grandes industries. On remarque, à nouveau, que dans l'Ouest le prix de l'énergie excédentaire vendue hors province est toujours inférieur à celui de l'énergie garantie vendue aux industries installées dans la province productrice. Le prix payé par l'Alberta pour l'énergie garantie de la Saskatchewan constitue cependant une exception.

En Ontario en 1983, le prix des achats d'énergie effectués par cette province se situait à mi-chemin entre celui payé par les grosses industries de cette province et celui supporté par les grosses industries de la province productrice. Une telle approche semble raisonnable.

Le même type d'énergie vendue par Hydro-Québec en Ontario est vendue au Nouveau-Brunswick à près de deux fois le prix payé par l'Ontario parce que le Nouveau-Brunswick serait dans l'obligation d'utiliser ses centrales diesel s'il ne pouvait acheter l'énergie excédentaire de l'Hydro-Québec. De son côté le Nouveau-Brunswick a pu maintenir la composante énergie du prix à ses abonnés en vendant ses surplus à la Nouvelle-Écosse, l'Ile-du-Prince-Edouard et aux États-Unis à un prix reflétant la valeur de l'énergie. En conséquence, les provinces achetant cette énergie ont dû payer un prix relativement élevé.

4. LA TARIFICATION DE L'ÉNERGIE ÉLECTRIQUE EXCÉDENTAIRE: UNE AUTRE APPROCHE

Les sections précédentes ont discuté des types d'énergie électrique, de leur tarification et de quelques problèmes associés à l'utilisation de la notion de "valeur" dans la tarification. Une autre approche se référant à la notion de "coût" est maintenant examinée.

Lors de l'établissement du coût de la fourniture de l'énergie excédentaire les principales questions à aborder sont en particulier les suivantes:

- Doit-on utiliser le coût moyen ou le coût marginal sur le réseau?
 - Comment allouer les coûts à la puissance et à l'énergie?
 - Quel rendement doit réaliser le producteur?
- i) Coût moyen ou coût marginal sur le réseau?

Au Canada et aux États-Unis les abonnés des sociétés de production et de distribution d'électricité sont tous considérés comme de nouveaux clients; personne n'a de droits acquis. Cette approche est équitable; tous les abonnés industriels paient un même prix basé sur le coût de production. Un nouvel abonné ne paie pas plus qu'un ancien client pour la puissance et l'énergie qu'il demande; en d'autres terms il ne paie pas le coût marginal.

Les sections précédentes ont indiqué que l'énergie excédentaire d'origine hydraulique constituait la majeure partie de l'énergie vendue entre provinces. Ces ventes d'excédents sont prises en compte par les provinces vendant ces excédents dans

leur plan d'équipement et leur planification financière. De la même façon, les provinces acheteuses incluent ces options lors des études des besoins en équipement de production. Chaque partie contractante s'attend généralement à ce que les accords soient prolongés dans le futur. La construction de lignes haute tension reliant producteur et acheteur illustre ce point. On peut donc dire que l'acheteur devient un client du producteur et comme tout client industriel normal reçoit de l'énergie produite à la fois par des anciennes et des nouvelles centrales. Pour ces raisons, la société acheteuse peut être considérée comme un abonné industriel normal et avoir une tarification basée sur le coût moyen de production.

ii) Le coût de la puissance et celui de l'énergie

La fourniture d'électricité requiert de la puissance et de l'énergie. Ces deux composantes sont inséparables; l'une nécessite l'autre. En termes économiques, il s'agit de produits joints (référence 2). L'allocation des coûts entre puissance et énergie ne peut donc se faire d'une façon exacte. Plusieurs méthodes d'allocation ont été développées afin de pouvoir facturer des abonnés ayant des facteurs de charge différents. Traditionnellement, le coût de la puissance a été associé aux frais fixes et celui de l'énergie aux frais variables. Ceci n'est cependant pas forcément correct.

Les figures 7 et 8 illustrent l'évolution de la relation entre coûts fixes et coûts variables en fonction du facteur de charge. Le parc de production imaginé ici est composé de centrales permettant de minimiser les coûts totaux selon des facteurs charge différents; la production est assurée par des centrales nucléaires, diesel et des turbines à gaz. La figure 8 montre comment les parts respectives de l'énergie de pointe, intermédiaire et de base évoluent avec le facteur de charge. La figure 9 indique comment les coûts fixes et

variables évoluent avec le facteur de charge. Dans le cas présenté ici, la valeur de l'énergie intermédiaire est quatre fois plus élevée que celle de l'énergie de base et celle de l'énergie de pointe six fois celle de l'énergie de base. Cette figure indique que lorsque le facteur de charge croît la part des coûts fixes augmente et celle des coûts variables diminue. Inversement, lorsque le facteur de charge décroît, la part des coûts fixes diminue et celle des coûts variables augmente.

Si donc l'on souhaite que la grille tarifaire comprenne une prime pour la puissance et une prime pour l'énergie, la prime énergie devrait inclure une partie des frais fixes. Ceci devrait permettre au vendeur de recouvrer ses coûts réels.

Ontario Hydro a récemment développé une méthode appelée "centrale de pointe mixte" pour réaliser l'allocation des coûts entre puissance et énergie (référence 3). Cette approche a été examinée par la Commission de l'Énergie de l'Ontario qui l'a trouvée "bien fondée et logique". Pour le réseau d'Ontario Hydro, l'application de cette méthode conduit à allouer 40% des coûts à la puissance et 60% à l'énergie. Pour le même système, l'allocation des coûts en fonction des frais fixes et variables aurait conduit à une allocation inversée.

Puisque la majeure partie des ventes inter-provinciales sont interruptibles, l'acheteur doit maintenir une capacité de production adéquate; il souhaite donc n'acheter que de l'énergie. Le prix de cette énergie devrait inclure une partie des frais fixes du producteur. Dans l'étude citée précédemment, Ontario Hydro a estimé que le prix de cette énergie excédentaire pourrait être égale à environ 60% du coût total de la fourniture de l'électricité en haute tension. Le réseau d'Ontario Hydro apparaît comme une bonne approximation d'un réseau type car il inclut la plupart des types de

centrale: hydrauliques (de pointe et de base), nucléaires, thermiques classiques (de pointe et de base). Dans la réalité, la proportion des coûts attribuables à l'énergie et à la puissance variera selon chaque situation.

iii) Le taux de rendement sur les investissements liés aux ventes inter-provinciales

Le prix d'un bien devrait inclure un rendement adéquat sur l'investissement servant à produire ce bien. Dans le cas des ventes inter-provinciales, ce rendement devrait reconnaître que les ressources d'une province productrice sont utilisées pour le bénéfice de la province acheteuse. Ces ressources incluent les sites des centrales, les retenues d'eau et les emprises des lignes de transport.

Une approche possible dans la recherche d'un taux de rendement adéquat pourrait être l'application d'un facteur majorant au rendement attendu sur les ventes à l'intérieur de la province.

Généralement, les tarifs sont considérés comme équitables si le rendement résultant des études tarifaires se situe entre 80% et 120% du taux de rendement considéré normal. Sur ces bases, le taux de rendement à réaliser sur les ventes hors provinces pourrait être égal à 120% du taux de rendement attendu sur les ventes à l'intérieur de la province.

D'autre part, les études sur le rendement des investissements à long terme au Canada ont montré que le rendement obtenu par le pays était égal à environ 1,6 fois le coût des emprunts (référence 5). Cette différence est due aux divers impôts et taxes que l'on peut considérer comme un rendement additionnel demandé par le pays. Sur cette base et puisque les sociétés acheteuses d'énergie deviennent des clients à long terme, la recherche d'un rendement égal à 160% du rendement attendu sur les ventes intérieures semble raisonnable.

Une telle approche protégerait l'acheteur d'une tarification excessive tout en assurant au producteur le rendement attendu par l'ensemble de la collectivité.

Enfin, pour que le producteur puisse récupérer tous ses coûts, incluant un bon rendement, l'acheteur pourrait s'engager à acheter de l'énergie excédentaire chaque fois qu'elle est disponible et utilisable. Ceci pourrait faire l'objet d'un engagement contractuel ce qui permettrait de maximiser les économies allant aux collectivités des deux provinces.

5. CONCLUSIONS

Le débat sur la tarification des transferts d'énergie électrique entre provinces peut être porté à un niveau plus philosophique, celui de l'équité. L'équité est associée ici à la perception que chaque province se fait du Canada et aux réponses à des questions telles que:

- Doit-on traiter tous les Canadiens de la même manière ou certains peuvent-ils bénéficier d'un traitement de faveur?
- Doit-on laisser les prix du pétrole, arbitrairement élevés, créer des inégalités dans notre pays?
- Doit-on essayer de minimiser les coûts de l'électricité pour l'ensemble des Canadiens ou pour les habitants de nos provinces respectives?

Le principe de tarification actuel basé sur la "valeur" et le partage des économies réalisées et appliqué à des ventes d'énergie effectuées la plupart du temps dans une seule direction accentue les disparités régionales.

Une autre approche pourrait être retenue, basée sur un principe de tarification de l'énergie excédentaire plus rationnel et équitable et indépendant des fluctuations des prix mondiaux du pétrole. L'alternative proposée ici, basée sur les coûts, n'est pas parfaite mais offre un certain nombre d'avantages tels:

- un partage par un plus grand nombre de Canadiens de l'énergie excédentaire d'origine hydraulique actuellement disponible au Canada;

- un taux de rendement acceptable pour le producteur lui permettant de recouvrer ses coûts, et procurant le rendement demandé par la collectivité en contrepartie de l'utilisation de ses ressources; et
- la possibilité d'une planification financière basée sur le principe plus rationnel des coûts de production plutôt que sur des prix mondiaux du pétrole très volatiles.

Le moment est peut-être venu pour que les Canadiens envisagent une autre approche à la tarification des transferts d'énergie électrique. Les sociétés provinciales de production et de distribution d'électricité sont nées des difficultés associées aux petites sociétés privées. Devraient-elles maintenant évoluer vers un réseau national comme le font de plus en plus de pays? Les économies d'échelle déjà réalisées au niveau provincial pourraient aussi être obtenues au niveau national.

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FIGURE 1

COMMON TYPE OF INTER-PROVINCIAL ELECTRICITY SALES
TYPES COURANTS DE VENTES D'ELECTRICITÉ INTER-PROVINCIALES

1. FIRM POWER BY CONTRACT
PUISSANCE SOUSCRITE
2. FIRM POWER FROM A DEDICATED FACILITY
PUISSANCE SOUSCRITE DE SOURCE PRÉFÉRENTIELLE
3. FIRM POWER BY UNIT PARTICIPATION
PUISSANCE GARANTIE PAR PARTICIPATION CONJOINTE
4. SURPLUS ENERGY BY ECONOMY INTERCHANGE
SURPLUS D'ÉNERGIE PAR INTERCONNEXION
5. SURPLUS ENERGY WHEN AVAILABLE
SURPLUS D'ÉNERGIE QUAND DISPONIBLE

INTER-PROVINCIAL TRANSFERS OF ELECTRIC ENERGY IN 1983
TRANSFERTS D'ENERGIE ELECTRIQUE ENTRE PROVINCES EN 1983
(Stat-Can - Cat. 57-202)

RECEIVED FROM OTHER PROVINCES
RECUE D'AUTRES PROVINCES

PROVINCE	PURCHASES ACHETEE		EXCHANGE ENTENTE	TOTAL	
	GW.h	\$x1000		GW.h	\$x1000
B.C./C.B.	43	83	2	46	83
Alta.	138	1,696	28	166	1,696
Sask.	344	5,806	1,106	1,450	5,806
Man.	100	782	1,121	1,222	782
Ont.	6,311	90,885	22	6,333	90,885
Que.	31,188	88,879	53	31,241	88,879
N.B./N.-B.	4,023	114,814	69	4,092	114,814
N.S./N.-E.	672	21,758	65	737	21,758
P.E.I./I.P.E.	390	20,431	129	519	20,431
Nfld./T.-N.	0	0	0	0	0
CANADA	43,211	345,134	2,595	45,805	345,134

INTER-PROVINCIAL TRANSFERS OF ELECTRIC ENERGY IN 1983
TRANSFERTS D'ENERGIE ELECTRIQUE ENTRE PROVINCES EN 1983
(Stat-Can - Cat. 57-202)

PROVINCE	FIRM SOUSCRITES		SECONDARY EXCEDENTAIRE		TOTAL (F+S) TOTAL (S+E)		EXCHANGE ENTENTE		TOTAL	
	GW.h	\$x1000	GW.h	\$x1000	GW.h	\$x1000	GW.h	\$x1000	GW.h	\$x1000
B.C./C.B.	5	163	130	1,399	135	1,562	28		163	1,562
Alta.	0	14	43	69	43	83	2		46	83
Sask.	3	134	100	782	103	916	1,107		1,211	916
Man.	225	5,542	1,057	13,062	1,281	18,604	1,123		2,405	18,604
Ont.	0	0	0	0	0	0	65		65	0
Que.	3,684	54,197	5,656	134,641	9,340	188,838	9		9,349	188,838
N.B./N.-B.	12	1,167	1,051	41,022	1,063	42,189	196		1,258	42,189
N.S./N.-E.	0	0	57	4,063	57	4,063	64		121	4,063
P.E.I./I.P.E.	0	0	0	0	0	0	0		0	0
Nfld./T.-N.	31,188	88,879	0	0	31,188	88,879	0		31,188	88,879
CANADA	35,117	150,096	8,094	195,038	43,211	345,134	2,595		45,805	345,134

INTER-PROVINCIAL SALES OF ELECTRIC ENERGY IN 1983
VENTES D'ENERGIE ELECTRIQUE ENTRE PROVINCES EN 1983

FIRM AND SECONDARY ENERGY (GW.h)
ENERGIE SOUSCRITE ET EXCEDENTAIRE (GW.h)

DELIVERIES TO LIVREE A	B.C. C.B.	Alta.	Sask.	Man.	Ont.	Que.	N.B. N.-B.	N.S. N.-E.	P.E.I. I.P.E.	Nfld. T.-N.
RECEIVED FROM RECUE DE										
B.C./C.B.	-	135								
Alta.	43	-	0							
Sask.		3	-	100						
Man.			344	-	938					
Ont.				0	-	0				
Que.					5,374	-	3,966			0
N.B./N.-B.						0	-	672	390	
N.S./N.-E.							57	-		
P.E.I./I.P.E.							0		-	
Nfld./T.-N.						31,188				-

CONFERENCE OF PROVINCIAL ENERGY MINISTERS
SHAWINIGAN CONSULTANTS INC.

FIGURE 5

INTER-PROVINCIAL SALES OF ELECTRIC ENERGY IN 1983
VENTES D'ENERGIE ELECTRIQUE ENTRE PROVINCES EN 1983

AVERAGE SALE PRICE (cents/kw.h)
PRIX DE VENTE MOYEN (cents/kw.h)

DELIVERIES TO LIVREE A	B.C. C.B.	Alta.	Sask.	Man.	Ont.	Que.	N.B. N.-B.	N.S. N.-E.	P.E.I. I.P.E.	Nfld. T.-N.
RECEIVED FROM RECUE DE										
B.C./C.B.	-	1.16								
Alta.	0.19	-	N/A							
Sask.		4.37	-	0.78						
Man.			1.69	-	1.37					
Ont.				N/A	-	N/A				
Que.					1.45	-	2.79			N/A
N.B./N.-B.						N/A	-	3.24	5.23	
N.S./N.-E.							7.15	-		
P.E.I./I.P.E.							N/A		-	
Nfld./T.-N.						0.28				

INTER-PROVINCIAL SALES OF ELECTRIC ENERGY IN 1983
VENTES D'ENERGIE ELECTRIQUE ENTRE PROVINCES EN 1983

AVERAGE PRICES
PRIX MOYENS

---A---

---B---

PROVINCE	TO OTHER PROVINCES AUX AUTRES PROVINCES		TO LARGE INDUSTRIES AUX INDUSTRIES LOURDES		(A/B)
	FIRM SOUSCRITE cents/kw.h	SECONDARY EXCEDENTAIRE cents/kw.h	DEMAND DEMANDE cents/kw.h	ENERGY ENERGIE cents/kw.h	
B.C./C.B.	3.39	1.08	0.73	1.80	0.60
Alta. A.P. Trans.	4.68	0.16	0.75 1.68	1.90 0.76	<1
Sask.	4.37	0.78	1.10	1.70	0.46
Man.	2.47	1.24	0.80	1.23	1.00
Ont.	N/A	N/A	1.49	1.57	N/A
Que.	1.47	2.38	1.14	1.35	1.76
N.B./N.-B.	10.11	3.90	1.55	2.35	1.66
N.S./N.-E.	N/A	7.15	1.12	3.71	1.93
P.E.I./I.P.E.	N/A	N/A	N/A	N/A	N/A
Nfld./T.-N.	0.28	N/A	N/A	N/A	N/A

ELECTRIC ENERGY PRICES IN CANADA (1983) **PRIX DE L'ÉNERGIE ÉLECTRIQUE AU CANADA (1983)**

YUK.	N.W.T. T.N.O.				Nfld T.N.	
B.C. C.B.	ALTA.	SASK.	MAN.	ONT.	QUE.	
D 0.7 E 1.8 A 2.5	D 0.8-1.7 E 1.9-0.8 A 2.7-2.5	D 1.1 E 1.7 A 2.8	D 0.8 E 1.2 A 2.0	D 1.5 E 1.6 A 3.1	D 1.1 E 1.4 A 2.5	
1.2 0.2	0.8 1.7	1.4 1.5	2.8 5.2	5.2 3.2	2.7 N.S. D 1.1 E 3.7 A 4.8	P.E.I. I.P.E.

Figure 7

- D Demand charge to large industries in cents/kWh at 60% load factor.
- E Composante puissance aux industries lourdes en cents/kWh - Facteur de charge 60%
- A Energy charge to large industries in cents/kWh.
- A Composante énergie aux industries lourdes en cents/kWh
- Average rate to large industries in cents/kWh.
- Prix moyen aux industries lourdes en cents/kWh
- Average price in cents/kWh of surplus energy sales.
- Prix moyen en cents/kWh de l'énergie excédentaire

Figure 8

LOAD DURATION CURVES FOR A HYPOTHETICAL SYSTEM

COURBES DES PUISSANCES CLASSÉES D'UN SYSTÈME FICTIF

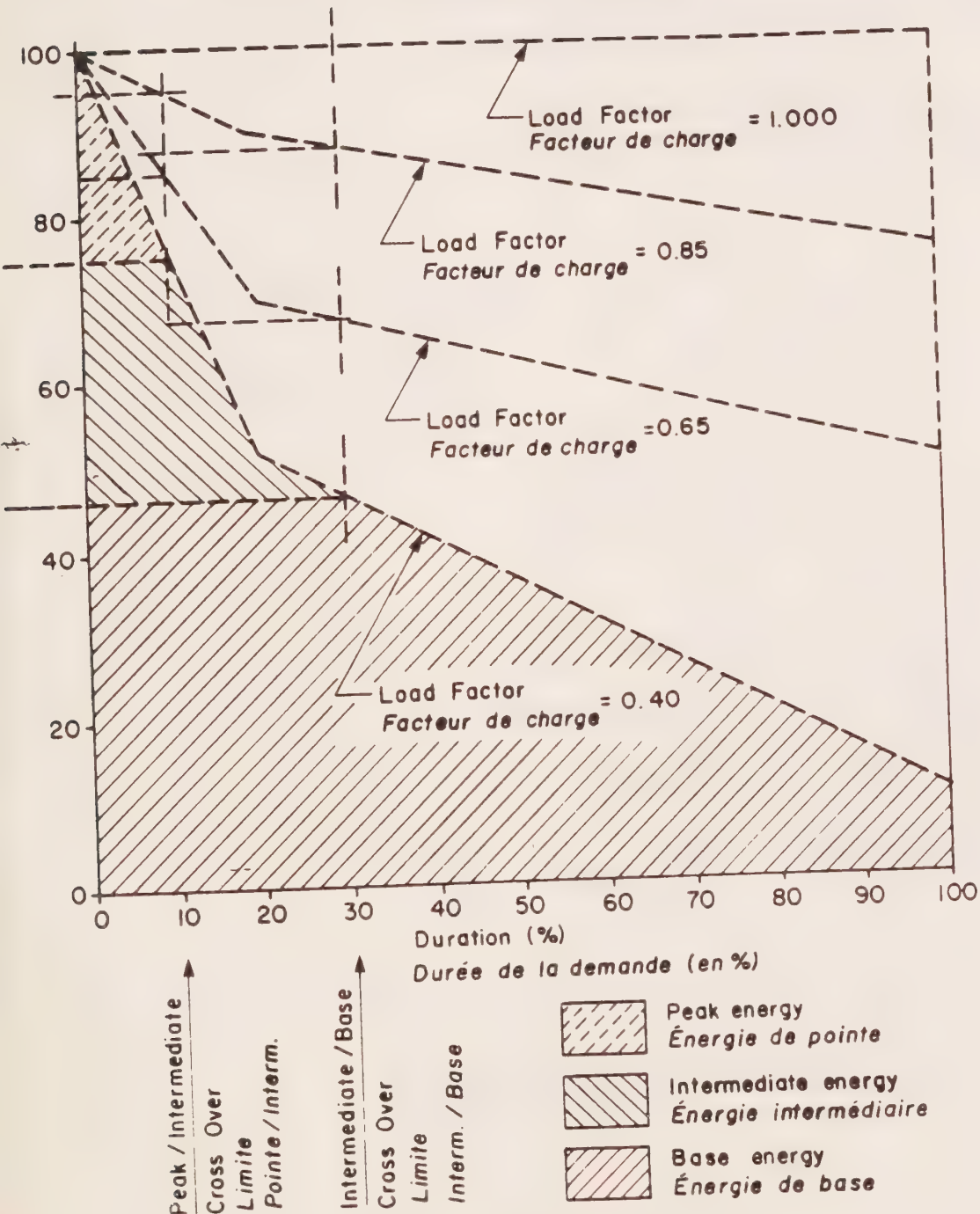
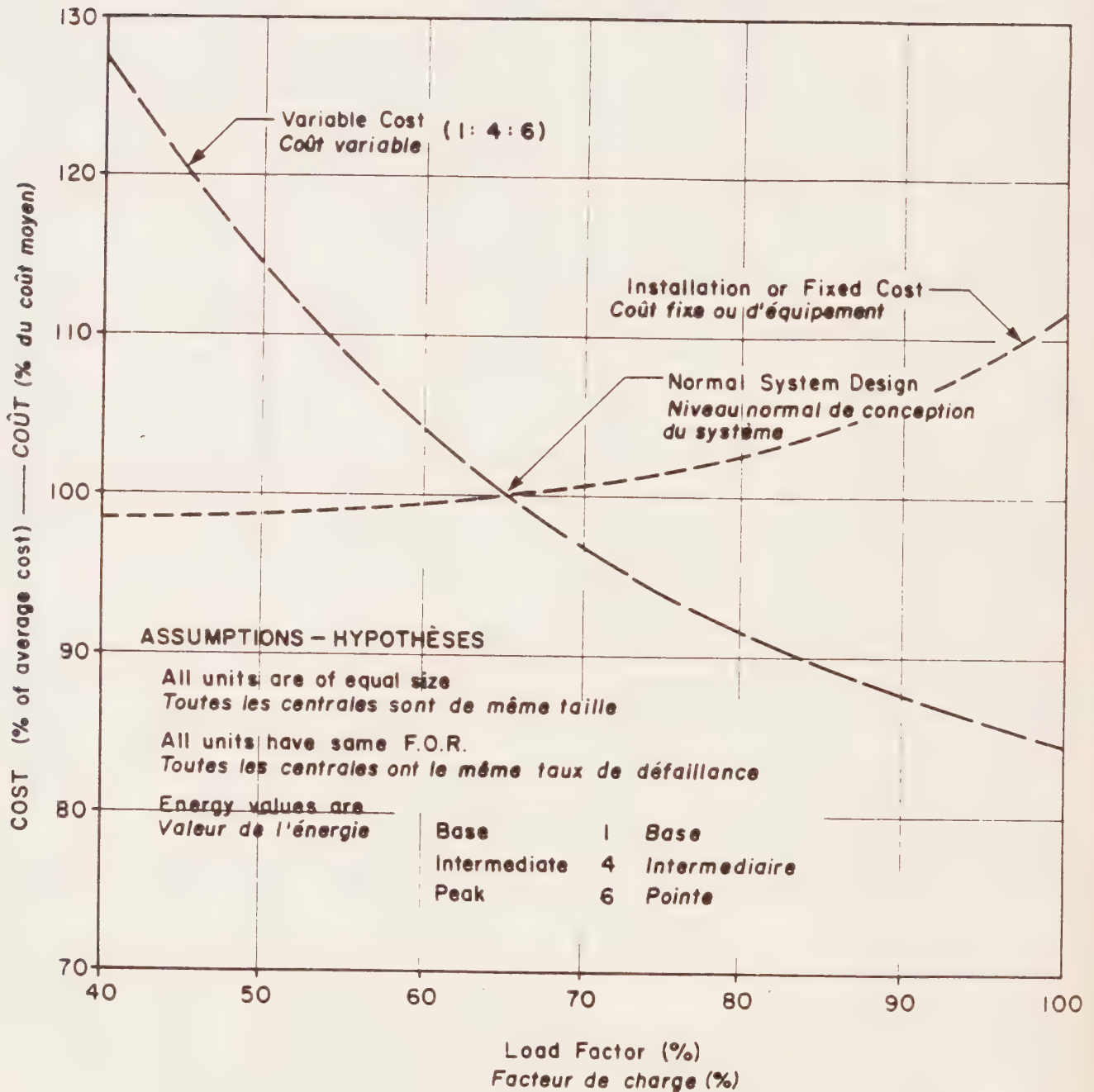


Figure 9

**SYSTEM COSTS AS A
FUNCTION OF LOAD FACTOR**

**ÉVALUATION DES COÛTS DE FOURNITURE
EN FONCTION DU FACTEUR DE CHARGE**



DOCUMENT: 860-168/006

MEETING OF THE COUNCIL OF PROVINCIAL
ENERGY MINISTERS (CPEM)

Press release



CHARLOTTETOWN, P.E.I.
September 16, 1985

COUNCIL OF PROVINCIAL ENERGY MINISTERS - PRESS RELEASE

Charlottetown, September 16, 1985 -- Energy Ministers of the ten provinces, Yukon and the Northwest Territories convened today in Charlottetown for the annual meeting of the Council of Provincial Energy Ministers under the chairmanship of the Honourable Frederick L. Driscoll, P.E.I. Minister of Energy and Forestry.

The Ministers discussed reports submitted by the Interprovincial Advisory Committee on Energy. The Ministers received a report from the Hon. Vincent Kerrio of Ontario, on the structure of energy programs being developed by the federal government under its National Conservation and Alternative Energy Initiative (NCAEI). The Ministers agreed to continue to press for federal-provincial-territorial arrangements which would ensure the efficient delivery of conservation and alternative energy programs.

The government of Prince Edward Island, through its consultant Mr. George Scruton, reviewed for the Ministers alternative pricing mechanisms for electrical energy sold between provinces.

The Honourable John Zaozirny of Alberta reviewed the progress of federal-provincial energy discussions, emphasizing oil and natural gas. He noted the benefits of the Atlantic and Western Accords which were concluded during the past year.

RÉUNION DU CONSEIL DES MINISTRES PROVINCIAUX
DE L'ÉNERGIE (CMPE)

Communiqué de presse

CHARLOTTETOWN (I-du-P.-É)
Le 16 septembre 1985

CONSEIL DES MINISTRES PROVINCIAUX DE L'ÉNERGIE - COMMUNIQUÉ DE PRESSE

Charlottetown, le 16 septembre 1985 -- Les ministres de l'Énergie des dix provinces canadiennes, du Yukon et des Territoires du Nord-Ouest se sont réunis aujourd'hui à Charlottetown pour la réunion annuelle du Conseil des ministres provinciaux de l'Énergie présidée par l'honorable Frederick L. Driscoll, le ministre de l'Énergie et des Forêts de l'Île-du-Prince-Édouard.

Les ministres ont discuté des rapports qui leur ont été présentés par le Comité consultatif interprovincial sur l'énergie. Ils ont pris connaissance d'un rapport présenté par l'honorable Vincent Kerrio de l'Ontario portant sur la structure des programmes énergétiques qu'élabore actuellement le gouvernement fédéral en vertu de son programme d'Initiative nationale en économies d'énergie et en énergies renouvelables (INEEER). Les ministres se sont entendus pour poursuivre leurs représentations en vue de la conclusion d'ententes entre les gouvernements des provinces, des Territoires et le gouvernement fédéral qui permettent la mise en oeuvre efficace des programmes portant sur les économies d'énergie et les énergies renouvelables.

Le gouvernement de l'Île-du-Prince-Édouard, par l'intermédiaire de son conseiller, M. George Scruton, a exposé, à l'intention des ministres, les divers mécanismes de tarification de l'électricité échangée entre les provinces.

L'honorable John Zaozirny de l'Alberta, a rendu compte du progrès accompli dans les discussions fédérales-provinciales sur l'énergie en insistant sur le pétrole et le gaz naturel. Il a souligné les avantages des Accords de l'Ouest et de l'Atlantique qui ont été conclus au cours de la dernière année.

MEETING OF THE COUNCIL OF PROVINCIAL
ENERGY MINISTERS (CPEM)RÉUNION DU CONSEIL DES MINISTRES PROVINCIAUX
DE L'ÉNERGIE (CMPE)CHARLOTTETOWN, P.E.I.
September 16, 1985CHARLOTTETOWN (I-du-P.-É)
Le 16 septembre 1985

LIST OF PUBLIC DOCUMENTS

LISTE DES DOCUMENTS PUBLICS

DOCUMENT NO. DU DOCUMENT	SOURCE ORIGINE	TITLE TITRE
860-168/004	Shawinigan Consultants Inc.	✓ Electrical Energy Pricing Alternatives in Canada
	Experts- conseils Shawinigan Inc.	✓ Les approches de la tarification de l'énergie électrique au Canada
860-168/006		✓ Press Release Communiqué de presse
860-168/009	Secretariat Secrétariat	✓ List of Public Documents ✓ Liste des documents publics

